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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 1065.

THE MAXWELL LAND GRANT COMPANY, PLAINTIFF IN ERROR,

vs.

JOHN B. DAWSON.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

FILED NOVEMBER 21, 1893.

(15,449.)

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the Territory of New Mexico:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, between Maxwell Land Grant Company, plaintiff in error, and John B. Dawson, defendant in error, a manifest error hath happened, as it is said, to the great damage of the said plaintiff in error, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, 1893, next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of the supreme court of the Territory of New Mexico, this ninth day of September, 1893.

Seal Supreme Court, Territory of New Mexico.

H. S. CLANCY,
Clerk of the Supreme Court of the Territory of New Mexico.

I hereby make return to the foregoing writ by annexing thereto an authenticated transcript of the record and the opinions filed in said cause under my hand and the seal of said supreme court.

Seal Supreme Court, Territory of New Mexico.

H. S. CLANCY, *Clerk.*

b Be it remembered that heretofore, to wit, on the 17th day of August, A. D. 1892, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a certain transcript from the district court in and for the county of San Miguel, in said Territory; which said transcript is in the words and figures following, to wit:

1 *Transcript of Record.*

Pleas before the Honorable James O'Brien, chief justice of the supreme court of the Territory of New Mexico and judge of the fourth judicial district court thereof, at a regular term of said district court begun and held in and for the county of San Miguel, at the court-house, in the town of Las Vegas, commencing on the 4th day of April, A. D. 1892.

MAXWELL LAND GRANT COMPANY
vs.
JOHN B. DAWSON. } No. 4123.

Be it remembered, that heretofore, to wit, on the 23d day of September, A. D. 1891, the said plaintiff filed in the clerk's office of the fourth judicial district for the Territory of New Mexico its declaration, which said declaration is in words and figures as follows, to wit:

Declaration.

TERRITORY OF NEW MEXICO, }
County of Colfax. }

In the District Court of the said Territory of New Mexico for the said County of Calfax, at the October Term, A. D. 1891, Thereof.

To the Honorable James O'Brien, chief justice of the supreme court of said Territory and judge of said district court:

The Maxwell Land Grant Company, a corporation organized and existing under the laws of the Kingdom of the Netherlands, and doing business within the Territory of New Mexico, in conformity with the laws thereof, and having its principal place of business in said Territory, in the county of Colfax, plaintiff, complains of John B. Dawson, a resident of said county of Colfax, defendant, in a plea of ejectment:

2 For that whereas, heretofore, to wit, on the 1st day of January, A. D. 1891, at the county of Colfax aforesaid, plaintiff was entitled to the possession of that certain tract of land commonly known as the Beaubien and Miranda grant, or the Maxwell grant, situate principally in said county of Colfax and partly in the county of Taos in said Territory, and partly in the State of Colorado, which said tract of land is described as follows:

Commencing below the junction of the Rayado and Red rivers; from thence in a direct line to the east to the first hills; from thence, following the course of Red river in a northerly direction, to the junction of the Una de Gato with Red river; from thence, following along said hills to the east of the Una de Gato river, to the summit of the table land (mesa); from whence, turning northwest, following said summit to the summit of the mountain which separates the waters of the rivers which run towards the east from those which run to the west; from thence, following the summit of said

mountain in a southerly direction, to the first hill east of the Rayado river; from thence, following along the brow of said hill, to the place of beginning. Being the same lands described in a patent of the United States, issued by the President of the United States to Charles Beaubien and Guadalupe Miranda, their heirs and assigns, dated the 19th day of May, A. D. 1879, and recorded in Deed Book B, pages 210 to 229 inclusive, of the records of said Colfax county.

And afterwards, to wit, on the day and year aforesaid, at the county aforesaid, the said defendant entered into said premises and unlawfully withheld, and thence hitherto hath unlawfully withheld, and still doth unlawfully withhold from the plaintiff, the possession of that portion thereof situate in said county of Colfax, and bounded on the north by the northern boundary of the Ter-
3 ritory of New Mexico, to its damage, in the sum of five hundred dollars. And plaintiff avers that the monthly value of the rents and profits of said premises is five hundred dollars.

Wherefore plaintiff brings suit, and prays judgment of this honorable court for the recovery of the possession of said premises, and for the sum of five hundred dollars, its damage aforesaid, and the sum of five hundred dollars per month from the present time until it is let into possession, and for the costs of this court.

FRANK SPRINGER,
Attorney for Plaintiff.

And afterwards, to wit, on the 21st day of April, A. D. 1892, there was filed in the office of said clerk pleas of the defendant, in words and figures as follows, to wit:

District Court, Fourth Judicial District, County of San Miguel, Territory of New Mexico.

THE MAXWELL LAND GRANT CO. *vs.* JOHN B. DAWSON. } Ejectment. No. 4123.

Comes now said defendant, by A. A. Jones, his attorney, and defends the wrong, injury and the unlawful withholding the possession of the lands and premises, when, etc., and for his plea herein says: That said plaintiff ought not to have or maintain its aforesaid action against him, because he says that he is not guilty of all or any of the supposed wrongs, injuries or the unlawful withholding of possession which the said plaintiff hath above thereof complained against this defendant; and of this the said defendant puts himself upon the country, etc.

A. A. JONES,
Attorney for Defendant.

And the said plaintiff doth the like.

FRANK SPRINGER,
Attorney for Plaintiff.

7 *Replication.*

TERRITORY OF NEW MEXICO,)
County of Colfax.)

In the District Court for the Fourth Judicial District.

THE MAXWELL LAND GRANT COMPANY)
vs.
JOHN B. DAWSON.)

Replication of the plaintiff to second, third, and fourth pleas.

And the said plaintiff, as to the said plea of the said defendant by him secondly above pleaded, whereof he hath put himself upon the country, doeth the like; except as to so much of the land in said plea mentioned and described, on both sides of the Vermejo river, as lies within the following boundaries, to wit: Beginning at the dam on said river, at the upper end of John B. Dawson's farm, thence to the right-hand point of rocks about three-fourths of a mile east of said dam, on the north side of the Vermejo river; thence down said river, in a straight line, to the northeastern end of the rock fence at the lower end of John B. Dawson's farm, as the same is now constructed; thence southwesterly, following said rock fence across said river, to the end of said fence; thence up said river in a straight line, to the place of beginning at said dam; which said last-mentioned tract of land plaintiff admits to be the property of defendant.

T. B. CATRON,
FRANK SPRINGER,
Attorneys for Plaintiff.

And the said plaintiff, as to the said plea of the said defendant by him thirdly above pleaded, saith *precludi non*, because it saith that the said defendant is guilty of the said trespass and ejectment in the said declaration mentioned in manner and form as
8 the said plaintiff hath above complained against him, on the land described in the said plea secondly above pleaded, and for which defense is taken by the said defendant, except as to the tract of land in the foregoing replication admitted to be the property of defendant, to wit, within ten years next before the commencement of this suit; and this the plaintiff prays may be inquired of by the country.

T. B. CATRON,
FRANK SPRINGER,
Attorneys for Plaintiff.

And the said defendant doeth the like.

A. A. JONES,
Attorney for Defendant.

And the said plaintiff, as to the said plea of the said defendant by him fourthly above pleaded, saith *precludi non*, because it saith that the said defendant hath not withheld from the said plaintiff the possession of the land and premises in said plea mentioned for more than ten years next before the commencement of this suit, and that the said plaintiff's right to commence its said action for the recovery of the possession of said land and real estate did accrue to the said plaintiff within ten years next before the commencement of this suit, except as to the tract of land in the first foregoing replication, admitted to be the property of defendant; and this the plaintiff prays may be inquired of by the country.

T. B. CATRON,
FRANK SPRINGER,
Attorneys for Plaintiff.

And the said defendant doeth the like.

A. A. JONES,
Attorney for Defendant.

9 At a regular term of the district court of the fourth judicial district of the Territory of New Mexico, begun and held within and for the county of San Miguel, at the court-house of said county, in the town of Las Vegas, New Mexico, on the 4th day of April, A. D. 1892, for the trial of causes arising under the laws of the Territory of New Mexico.

Present: Hon. James O'Brien, chief justice; Hon. Lewis C. Fort, district attorney; Jose L. Lopez, sheriff; M. A. Otero, clerk.

And afterwards, to wit, on Monday, May the 2d, A. D. 1892, the same being the 25th day of said term of court, the following among other proceedings were had, to wit:

THE MAXWELL LAND GRANT CO.
vs.
JOHN B. DAWSON. } No. 4123. Ejectment.

Comes now the defendant, by his attorney, A. A. Jones, Esq., and files additional plea; and comes also the plaintiff, by its attorney, and files replication, and issue having been joined now comes the following jury, to wit: Reymundo Sena, Louis Salano, Cruz Roibal, Cresencio Sandoval, Santiago Rodriguez, Telesfor Mestes, Pablo Zamora, Francisco Mares, Juan Jose Quintana, Juan Rafael Martinez, Pedro Quintana, Rafael Mendez, twelve good and lawful men of the body of the county, who are duly sworn the truth to speak upon the issues joined between the said parties, hear part of the evidence, and under the instructions of the court retire for the night.

And afterwards, to wit, on Wednesday, May 11, A. D. 1892, the same being the 33d day of said term of court, the following among other proceedings were had, to wit:

7 *Replication.*

TERRITORY OF NEW MEXICO, }
County of Colfax. }

In the District Court for the Fourth Judicial District.

THE MAXWELL LAND GRANT COMPANY }
vs.
JOHN B. DAWSON. }

Replication of the plaintiff to second, third, and fourth pleas.

And the said plaintiff, as to the said plea of the said defendant by him secondly above pleaded, whereof he hath put himself upon the country, doeth the like; except as to so much of the land in said plea mentioned and described, on both sides of the Vermejo river, as lies within the following boundaries, to wit: Beginning at the dam on said river, at the upper end of John B. Dawson's farm, thence to the right-hand point of rocks about three-fourths of a mile east of said dam, on the north side of the Vermejo river; thence down said river, in a straight line, to the northeastern end of the rock fence at the lower end of John B. Dawson's farm, as the same is now constructed; thence southwesterly, following said rock fence across said river, to the end of said fence; thence up said river in a straight line, to the place of beginning at said dam; which said last-mentioned tract of land plaintiff admits to be the property of defendant.

T. B. CATRON,
FRANK SPRINGER,
Attorneys for Plaintiff.

And the said plaintiff, as to the said plea of the said defendant by him thirdly above pleaded, saith *precludi non*, because it saith that the said defendant is guilty of the said trespass and ejectment in the said declaration mentioned in manner and form as
8 the said plaintiff hath above complained against him, on the land described in the said plea secondly above pleaded, and for which defense is taken by the said defendant, except as to the tract of land in the foregoing replication admitted to be the property of defendant, to wit, within ten years next before the commencement of this suit; and this the plaintiff prays may be inquired of by the country.

T. B. CATRON,
FRANK SPRINGER,
Attorneys for Plaintiff.

And the said defendant doeth the like.

A. A. JONES,
Attorney for Defendant.

And the said plaintiff, as to the said plea of the said defendant by him fourthly above pleaded, saith *precludi non*, because it saith that the said defendant hath not withheld from the said plaintiff the possession of the land and premises in said plea mentioned for more than ten years next before the commencement of this suit, and that the said plaintiff's right to commence its said action for the recovery of the possession of said land and real estate did accrue to the said plaintiff within ten years next before the commencement of this suit, except as to the tract of land in the first foregoing replication, admitted to be the property of defendant: and this the plaintiff prays may be inquired of by the country.

T. B. CATRON,
FRANK SPRINGER,
Attorneys for Plaintiff.

And the said defendant doeth the like.

A. A. JONES,
Attorney for Defendant.

9 At a regular term of the district court of the fourth judicial district of the Territory of New Mexico, begun and held within and for the county of San Miguel, at the court-house of said county, in the town of Las Vegas, New Mexico, on the 4th day of April, A. D. 1892, for the trial of causes arising under the laws of the Territory of New Mexico.

Present: Hon. James O'Brien, chief justice; Hon. Lewis C. Fort, district attorney; Jose L. Lopez, sheriff; M. A. Otero, clerk.

And afterwards, to wit, on Monday, May the 2d, A. D. 1892, the same being the 25th day of said term of court, the following among other proceedings were had, to wit:

THE MAXWELL LAND GRANT CO.
vs.
JOHN B. DAWSON. } No. 4123. Ejectment.

Comes now the defendant, by his attorney, A. A. Jones, Esq., and files additional plea; and comes also the plaintiff, by its attorney, and files replication, and issue having been joined now comes the following jury, to wit: Reymundo Sena, Louis Salano, Cruz Roibal, Cresencio Sandoval, Santiago Rodriguez, Telesfor Mestes, Pablo Zamora, Francisco Mares, Juan Jose Quintana, Juan Rafael Martinez, Pedro Quintana, Rafael Mendez, twelve good and lawful men of the body of the county, who are duly sworn the truth to speak upon the issues joined between the said parties, hear part of the evidence, and under the instructions of the court retire for the night.

And afterwards, to wit, on Wednesday, May 11, A. D. 1892, the same being the 33d day of said term of court, the following among other proceedings were had, to wit:

MAXWELL LAND GRANT COMPANY
vs.
JOHN B. DAWSON. } No. 4123.

Comes now the parties in the above-entitled cause, and come also the jury heretofore empanelled, who return their verdict in the following words and figures, to wit:

THE MAXWELL LAND GRANT COMPANY
vs.
JOHN B DAWSON.

We, the jury in the above-entitled cause, find the defendant not guilty.

REYMUNDO SENA, *Foreman.*

Comes now the plaintiff, by its attorney, Frank Springer, Esq., and gives notice of a motion for a new trial, which said motion is in words and figures as follows, to wit:

TERRITORY OF NEW MEXICO,
County of San Miguel.

In the District Court for the Fourth Judicial District, at the April Term, A. D. 1892.

MAXWELL LAND GRANT COMPANY
vs.
JOHN B. DAWSON.

Now comes the said plaintiff and moves the court to set aside the verdict of the jury in the above-entitled cause and grant a new trial therein, upon the following grounds:

First.—The verdict is contrary to the evidence.

Second.—The verdict is contrary to the instructions of the court.

Third.—The court erred in admitting the testimony objected to by plaintiff's counsel upon the trial.

Fourth.—The court erred in sustaining the objections of defendant to testimony offered by plaintiff upon the trial, and excluded by the court.

Fifth.—The court erred in giving to the jury the instructions which were excepted to by the plaintiff, to wit, instructions
11 Nos. 4, 5, 6 and 7, given by the court on its own motion, and instructions No-. 1, 2, 3, 4, 5, 6, 7, 8 and 9, given by the court at the request of defendant.

T. B. CATRON,
FRANK SPRINGER,
Attorneys for Plaintiff.

And afterwards, to wit, on Saturday, May 21st, A. D. 1892, the same being the 42d day of said term of the district court, the following among other proceedings were had, to wit:

THE MAXWELL LAND GRANT CO. vs. JOHN B. DAWSON. } Ejectment. No. 4123.

Comes now the parties in the above-entitled cause, by their respective counsel, and the plaintiff having at a former day of this term given notice of a motion for a new trial, the court now hears the same, and, after hearing argument of counsel, and being fully advised in the premises, the court denies said motion, plaintiff excepting. It is thereupon considered and adjudged by the court that the defendant, John B. Dawson, go hence without day, and that the plaintiff pay the costs of this proceeding to be taxed, and that execution issue therefor.

It is further ordered by the court that the plaintiff be granted until July 15th, 1892, to file bill of exceptions.

And afterwards, to wit, on the 6th day of July, A. D. 1892, the said plaintiff filed in the office of said clerk a bill of exceptions in said cause, which is in words and figures following, to wit:

TERRITORY OF NEW MEXICO, *County of San Miguel.*

THE MAXWELL LAND GRANT CO. vs. JOHN B. DAWSON. } Ejectment. No. 4123.

12 The plaintiff in the above-entitled cause proposes the following as the record and bill of exceptions upon which the judgment of the district court therein may be reviewed by the supreme court of the Territory of New Mexico, to wit:

1. The declaration.
2. Pleas 1, 2 and 3.
3. Replications.
4. Record entry of trial and verdict of jury.
5. Motion for new trial.
6. Record entry of order denying it.
7. Record entry of judgment upon the verdict.
8. Allowance of appeal.
9. The following bill of exceptions.

Bill of Exceptions.

TERRITORY OF NEW MEXICO, *County of San Miguel.*

In the District Court for the Fourth Judicial District in and for the County of San Miguel, April Term, A. D. 1892.

THE MAXWELL LAND GRANT CO. vs. JOHN B. DAWSON. } No. 4123. Ejectment.

Be it remembered, that on the trial of the above-entitled cause, at the regular April term of said court, on the 21st day of May, A. D.

1892, before the Honorable James O'Brien and a jury, the following evidence was introduced, to wit:

In the District Court for the Fourth Judicial District, Sitting within and for the County of San Miguel, Territory of New Mexico, April Term, A. D. 1892.

THE MAXWELL LAND GRANT COMPANY
vs.
JOHN B. DAWSON. } No. 4123.

This cause was tried before Chief Justice O'Brien and a jury, May 2, 1892.

Appearances: For plaintiff, Mr. Frank Springer, Mr. Thomas B. Catron; for defendant, Mr. A. A. Jones.

13 *Plaintiff's Case.*

Jury called and sworn.

On motion, witnesses were called and placed under the rule.

Opening statement of plaintiff's case made to jury by Mr. Frank Springer.

Mr. SPRINGER to court:

If your honor please, I will now proceed to introduce formally the title under which the plaintiff has to recover, and, although I have the original title papers of this grant, yet, as they are becoming somewhat old and worn with age and frequent use in cases, I prefer to use a certified copy of the printed record, which includes all of the deeds, the original United States patent, and the entire chain of title, certified from the records of the county; and to that I apprehend there will not be any objection on the other side, as it is a more convenient form for parties to use than to use these old papers.

I will therefore introduce in evidence first the patent of the United States.

Mr. SPRINGER to jury:

GENTLEMEN OF THE JURY: By consent of counsel and by permission of the court, I introduce the title upon which we rely in this case in the form of a certified copy, certified from the records of the county where the same is recorded, that is to say, the county of Colfax. Inasmuch as the original title papers and deeds have become somewhat worn with age, and it is more convenient for the court and every one else to use this certified copy, and it will go before the jury with the same force and effect as if the originals were introduced.

I introduce first the patent from the Government of the United States, dated May 19, 1879, to Charles Beaubien and Guadalupe Miranda, which conveys to these two grantees the tract of land granted by the government of Mexico in the year 1841, and which
14 was confirmed by the Congress of the United States in the year 1860. This document is signed by the President of the

United States. It contains a full description of the grant as it has been surveyed by the Government surveyors, and also a map showing the boundaries of the grant and the area of it, which is attached to the patent.

I will next offer in evidence a deed of Guadalupe Miranda, made by his attorney-in-fact, Pablo Miranda, to Lucien B. Maxwell, dated April 7, 1858, conveying to Maxwell all the interest of Miranda in the said grant, on page 31 of this transcript. Consideration, $2,745.

Also, a deed of Miranda to Maxwell, dated May 19, 1868, executed by Miranda in person, confirmatory of the deed formerly executed by his attorney-in-fact. Consideration, $2,745; and this last deed conveys all of his interest in the said grant.

I will next offer in evidence a deed of Teodora Beaubien and her husband, Frederick Muller, to Lucien B. Maxwell, dated April 4, 1864, the said Teodora being one of the daughters of Charles Beaubein, and said deed conveying all the right, title and interest acquired by the said Teodora by inheritance from her father, the late Charles Beaubien, of the county of Taos, deceased, being her undivided interest in said grant as one of the surviving heirs of said Charles Beaubien, deceased. Consideration, $500. This deed is duly acknowledged and recorded in the records of Mora county, in which the property was at that time situated, and also recorded in the county of Colfax, which was afterwards organized out of a part of what was formerly Mora county.

The first-mentioned deeds of Miranda to Maxwell are also duly recorded in these counties.

I will next offer in evidence a deed of Juana Beaubien and Joseph Clouthier, her husband, to Lucien B. Maxwell, dated April 4, 1864, conveying to Maxwell all of the right, title and interest acquired by the said Juana by inheritance from her father, the late Charles Beaubien, of the county of Taos, being her undivided interest in said grant as one of the surviving children of said Charles Beaubien. Consideration, $3,500. That deed is also acknowledged and recorded in the counties of Mora and Colfax.

I will next offer in evidence the deed of Eleanor Beaubien and Vidal Trujillo, her husband, to Lucien B. Maxwell, dated July 20th, 1864, conveying to Maxwell all the right, title and interest in the said Beaubien and Miranda grant acquired by the said Eleanor by inheritance from her father, the late Charles Beaubien, of the county of Taos, being her undivided interest in said grant, as one of the surviving heirs of Charles Beaubien. That deed is also acknowledged by the said Eleanor and her husband, and recorded in the counties of Mora and Colfax. Consideration, $3,000.

I will next offer the deed of Jesus G. Abreu and Petra Abreu, his wife, formerly Petra Beaubien, to Lucien B. Maxwell, dated February 10th, 1867, conveying to Maxwell all the undivided right, title and interest in the said Beaubien and Miranda grant which was acquired by said Petra Abreu as one of the heirs of her father,

Charles Beaubien. That deed is acknowledged and recorded in the county of Colfax. Consideration, $3,500.

I will next offer in evidence the deed of Paul Beaubien to Lucien B. Maxwell, dated January 1st, 1870, conveying to Maxwell all the right, title and interest in the said Beaubien and Miranda grant acquired by the said Paul Beaubien by inheritance from his father, the late Charles Beaubien, of the county of Taos, being his undivided interest in said grant as one of the six surviving heirs of said Charles Beaubien, deceased. Consideration, $3,500.

Mr. SPRINGER to the court:

If the court please, I have not here to make the proof at this point, the proof of the death of Charles Beaubien, and the fact that these five persons, together with Mrs. Maxwell, were his
16 heirs. Possibly counsel on the other side may waive proof of that, otherwise I will be compelled to reserve that link in my prooof until to-morrow. With that explanation I will go on with the rest of the documentary evidence.

Mr. SPRINGER to jury:

I will next offer in evidence the deed of Lucien B. Maxwell and his wife to the Maxwell Land Grant and Railway Company, dated April 30th, 1870. This is quite a long document. It conveys to the said company, with full covenants of warranty, all of the Beaubien and Miranda grant as acquired by Maxwell under the above-mentioned deeds, with the exception of a one-twelfth part undivided, and also certain mining claims and mining machinery that are mentioned in the deed. This deed is duly acknowledged and recorded in the county of Colfax. Consideration, $1,350,000.

I will next offer the deed of trust executed by Maxwell Land Grant and Railway Company to Thomas A. Scott and Samuel L. Felton, dated June 13, 1870, which is in the nature of a mortgage upon an undivided $\frac{11}{12}$ths of this grant, given to secure certain loans of money and certain bonds issued by that company. This document, which is quite a long one, also is duly acknowledged and recorded in the county of Colfax.

I next offer a deed by Lucien B. Maxwell and Luz B. Maxwell, his wife, to the Maxwell Land Grant and Railway Company, dated September 7th, 1870, which conveys all the property reserved from the former deed, including the undivided $\frac{1}{12}$th part, thus completing the transfer of the entire property to the company. That deed is duly acknowledged and recorded in the county of Colfax. Consideration, $125,000.

I next offer a deed of trust, made — the Maxwell Land Grant and Railway Company to the Farmers' Loan and Trust Company, dated November 1st, 1872, which is in the nature of a mortgage
17 upon the whole of the said grant, including the one undivided $\frac{1}{12}$ part that was conveyed by the last deed, and also the other property which had been reserved from the first deed, this mortgage being to secure certain other bonds issued by the company. This is also acknowledged and recorded in the county of Colfax.

Mr. JONES, counsel for defendant: I object to this instrument, because it does not appear that the seal of the company is attached to the instrument, and the person who purports to be the secretary of the company does not acknowledge it to be the act and deed of the company, or his own act and deed, and as to the acknowledgment of the president of the company, because there is no special venue laid for the acknowledgment. The venue is "United States of America, Territory of New Mexico," purports to have been acknowledged before the clerk of the United States district court for the first judicial district of the Territory of New Mexico, and it nowhere appears that the acknowledgment was taken within his district; and the acknowledgment of the president of the company does not recite that he signed the name of the company, but simply acknowledges that he signed said mortgage for and in behalf of said Maxwell Land Grant and Railway Company, but does not recite that he signed the name of the company, nor does it appear that the name of the company has been signed by any officer of the company.

The COURT: The ruling will be reserved.

Mr. SPRINGER: I next offer a decree of foreclosure in the district court of the then fourth judicial district of New Mexico, in and for the county of Colfax, dated the 16th day of October, 1879, in the case of Thomas A. Scott and Samuel L. Felton, trustees, against the Maxwell Land Grant and Railway Company and other parties,
18 defendants, adjudging a foreclosure of the first of the mortgages above referred to, and directing a sale of the mortgaged property by a special master of the court, for the purpose of realizing the sums of money found by the court to be due and unpaid on account of the bonds secured by mortgage to Scott and Felton. This decree covers all the property that was included in the first of these mortgages, that is to say $\frac{1}{1}\frac{1}{2}$ths undivided portion of the grant.

Mr. JONES: I presume these papers might as well go in subject to objection to be made hereafter.

Mr. SPRINGER: Yes, sir.

Mr. SPRINGER: I also offer a decree of foreclosure by the same court on the 16th of October, 1879, in the case of the Farmers' Loan and Trust Company, trustee, against The Maxwell Land Grant and Railway Company, and certain other defendants. This decree was for the foreclosure of the second of the mortgages above referred to and orders a sale by an officer of the court of the property included in it, to satisfy the amount due upon the bonds secured by that mortgage. The property included in this decree is the undivided $\frac{1}{1}\frac{1}{2}$ of the grant which was reserved out of the first mortgage and the other property that was reserved.

I next offer a deed dated March 27, 1880, by F. W. Clancey, as master in chancery of the district court of the first judicial district, to Frank R. Sherwin and Lucien Birdseye, conveying to the last-mentioned gentlemen the property which had been sold by the master in chancery pursuant to the first of the decrees which have already been mentioned, the property having been sold at public

auction, after advertisement, and having been bought at that sale by these two persons. That deed is duly acknowledged by Mr. Clancey as master in chancery of the court, and recorded in the records of Colfax county.

Mr. SPRINGER: I next offer in evidence a deed made March 27, 1880, by F. W. Clancey, as master in chancery, to the same
19 persons, Sherwin and Birdseye, conveying to them the property which was sold under the second of the foreclosure decrees already referred to, the said property having been sold at public auction and these parties having been the purchasers at the sale. This deed conveys the property which was reserved out of the first foreclosure sale and deed, and thus makes complete the sale of the entire grant under these two foreclosure decrees. This deed is acknowledged and recorded in the county of Colfax.

I next offer a deed dated May 31, 1880, by Frank R. Sherwin and Lucien Birdseye, to the Maxwell Land Grant Company, conveying to that company all the property which had been purchased by these two parties and deeded to them by the master in chancery in the two last-named deeds.

I also offer a deed dated July 30, 1880, by the Farmers' Loan and Trust Company to the Maxwell Land Grant Company, conveying the whole of the said grant by virtue of a sale made after advertisement under the power of sale contained in the mortgage to the Farmers' Loan and Trust Company.

Mr. SPRINGER to court:

These deeds, if the court please, and mortgages and decrees, constitute the chain of title from the original grantees named in the patent down to the plaintiff in this suit, for which, as I have already stated, I have to supply the proof of heirship of the Beaubien children, which I will probably be able to do the first thing in the morning.

The deed from Lucien B. Maxwell and wife to the Maxwell Land Grant and Railway Company dated April 30th, 1870, after describing the entire Maxwell grant and excepting from the operation of the conveyance certain improvements, etc., contained the following language:

"Excepting from the operation of this conveyance such tracts of land, part of the said estate, hereby warranted not to exceed in the aggregate fifteen thousand acres which the parties of the first part have heretofore sold and convey by deeds duly recorded on or prior to the 25th day of January one thousand eight hundred and seventy," and all the subsequent deeds under which the plaintiff claims contain the same exception, but not in exactly the same words.

Testimony of John B. Dawson.

JOHN B. DAWSON sworn.

Direct examination by FRANK SPRINGER:

20 Question. You are the defendant in this case, are you not?

Answer. Yes, sir.

Q. Your name is John B. Dawson?

A. Yes, sir.

Q. Where do you reside?

A. I live on the Vermejo, in Colfax county.

Q. In the Territory of New Mexico?

A. Yes, sir.

Q. I will ask you whether, on the 1st day of January, 1891, in the county of Colfax, you were in possession of any land along the Vermejo river, in the neighborhood of the edge of the foot-hills, I will say?

A. Yes, sir.

Q. At what place is the land situated which you were in possession of at that time?

A. Well, the place on the Vermejo about where the foot-hills comes to the prairie—the prairie and mountain together; that is the best I can describe it.

Q. Do you know a cañon up there called Saltpeter cañon?

A. Yes, sir.

Q. Were you in possession of any lands in that cañon at that time?

A. Well, I had stock on it.

Q. You were occupying it with your stock, and using it as your own?

A. Yes, sir, I had stock there, and used it; there was other stock there then.

Q. Does that cañon empty into the Vermejo river?

A. Yes, sir.

Q. Well, how far up that cañon were you occupying it with your stock?

A. Well, up to the head of it.

Q. About how far is the head of that cañon from the Vermejo?

A. I don't know.

21 Q. Well, is it several miles, or less than a mile? Give us a general idea.

A. From where it empties into the river to the head of it—well, I don't know.

Q. Is it as much as a mile?

A. Oh yes, of course. The question you want to know is, how far it is. I don't know how far it is. It is of course a mile.

Q. I don't care to be exact. I just want a general idea of it.

A. I will say this: I suppose from where it empties into the river to the head of it—I suppose it is eight or nine miles.

Q. Do you know a cañon there called Rail cañon?

A. Yes, sir.

Q. Does that empty into the Vermejo river at about the place you have been talking about?

A. Yes, sir, it runs into the river there.

Q. Above or below the other cañon we have been talking about?

A. Above.

Q. About how far above?

A. About five miles.

Q. Were you occupying any land in that cañon on the 1st of January, 1891?

A. I had stock in there.

Q. In what part of the cañon did you have stock?

A. Well, the whole length of it.

Q. Well, now, the land between these two cañons; were you occupying that or any portion of it on the 1st of January, 1891?

A. Yes, sir, above a certain line I did.

Q. You had stock, as I understand it, running in and about the head of Saltpeter cañon?

A. Yes, sir.

22 Q. And between the head of Saltpeter and Rail cañon?

A. Yes, sir.

Q. By the way, which side of the Vermejo are these two cañons?

A. They come in from the northeast side.

Q. At that time were you occupying or holding any land on the opposite side of the Vermejo from that?

A. Yes, sir.

Q. Are there any cañons on that side that are well known with names that you could mention?

A. Yes, sir.

—. Just name them, will you—those you were holding and occupying?

A. Well, the principal cañon was Coal cañon.

Q. Does that empty into the Vermejo in that neighborhood?

A. Yes, sir; right below my house.

Q. Does that empty above or below where Rail cañon comes in?

A. Just a little below.

Q. Are there any other well-known cañons on that side of the river that you were occupying or holding at that time?

A. Only a part above a certain line; the cañon known as Lacey cañon.

Q. You have spoken of a part of a cañon above a certain line, on both sides of the river. What line is that you refer to?

A. Well, it is a line that was to separate my plat or part of an original purchase from Maxwell.

Q. I don't care so much about that. I want to know what indicates it on the surface of the ground.

Mr. SPRINGER to the court: I would like to have stricken out what he says about a purchase from Maxwell.

23 The COURT: That may be stricken out.

A. The rock fence is only a part of the line.

Q. That rock fence, as I understand it, is the lower line of the premises occupied by you.

A. Yes, sir.

Q. And these two cañons, then, one on each side, of which you say you occupied a part, they passed on down and emptied into the Vermejo river somewhere below the general line of this rock fence?

A. Yes, sir.

Q. Now, take this cañon called Coal cañon; about how far from the Vermejo is the head of that cañon? I do not mean the full length of the cañon; take it from the head across to the river.

A. About three miles.

Q. Then the cañon itself is about how long from the head to where it crosses the line of your rock fence?

A. It does not cross the rock fence.

Q. Then about how long is that cañon from its head to its mouth?

A. Probably five miles.

Q. About — far is it from the head of the Lacey cañon to where it crosses your rock fence?

A. You mean from the continuation of the line of the rock fence?

Q. Yes, sir. How far is it from there up to the head of it?

A. It is a short distance; I suppose a mile.

Q. Then at that time you occupied land along the river, did you?

A. Yes, sir.

Q. The rock fence, as I understand it, being your lower line on the river; and what was the upper end of your occupation on the river?

A. My dam—the head of my acequia.

24 Q. About how far is it from that rock fence to this dam?

A. Well, I don't know, but about two miles; a little less than two miles, I think.

Q. What is the character of the country along the river at that point; I mean as to whether it is level prairie or a broken country?

Q. Do you mean right along the river?

A. Along the river and out on both sides in that region we have been talking about.

A. Well, it is flats and hills, small and pretty good sized bluffs, and so on.

Q. For instance, take it right along the river on each side for a short distance?

A. It is bottom land as far as the hills, and close to the river it is kind of mixed up. It is hard to describe it.

Q. On either side of the river do the hills rise to considerable height at some distance back?

A. Some places they do and some places it makes out into flats and cañons.

Q. For instance, the country between these cañons and back a little ways from the river, how is that?

A. As you go back from the river the country becomes more level.

Q. I suppose as you go up the cañons, the cañons rise and the country spreads out there?

A. Yes, sir; that is what I mean. There is more open country and more level country.

Q. Take it along each side of the valley there, along the river, are there hills pretty abrupt and high, or how is that?

A. Well, yes; the points come in there, but then it is just like I told you.

Q. Give us a good description of it. We want to know what kind of a place you have, as to the typography of the country.

25 A. There is points that are pretty high and there is other points very low, what we call little hills, you know, and there is flats between there and on the river, and the cañons leading up with open passways. It is what I call open ground in the cañons, and then there would be a rincon like and then little hills, and some of the hills rise pretty abrubt.

Q. Now the hills that face the river, and between the cañons, they are pretty abrubt, are they not, as a rule?

A. Maybe I can describe it better to you by this: Some of the hills are too abrupt to go up on to get wood with a wagon, and others we can drive on, what we call benches. We can drive out on them and get our wood.

Q. The hills or bluffs that face the river there, you could not drive straight up those for wood, could you?

A. There is some you could not, but there is plenty of them you can.

Q. I suppose there is some land there in the valley between these bluffs that you can raise enough to eat on, isn't there?

A. Oh, yes.

Q. You have the reputation of having a fine orchard; I suppose that grows there don't it?

A. Yes, sir.

Q. That is down next to the river, is it not?

A. Right close to my house.

Q. Your house is not far from the river?

A. Not very far.

Q. You are a farmer, are you not, and have a pretty good patch of cultivated land there?

A. Well, I am a stock-raiser and farmer.

Q. You have a pretty good tract of cultivated land there, have you not, lying along the river?

A. Yes, sir.

Q. You cultivate that land by means of irrigation?

26 A. Well, yes, I do; but there is a good portion of my crops that are raised without ever putting water on them.

Q. Which crops are those?

A. Well, I raise corn without irrigation, and beans.

Q. Potatoes, I suppose, too?

A. Well, potatoes grow best on the higher ground.

Q. Down in this valley land you have a ditch taken out of the river, haven't you?

A. Yes, sir.

Q. On both sides of the river?

A. No, sir; only on one side.

Q. Do you cultivate any land on the other side, where there is no ditch?

A. Yes, sir.

Q. Is that where you raise some of the corn and beans?

A. I raised crops different years in different places; sometimes on the side where I've got no ditch, and sometimes on the side where I have a ditch.

Q. About how far from the river do these crops you have cultivated extend on the side where there is no ditch?

A. Well, one-half a mile is about as far back as I plowed any land.

Q. On the other side, where there is a ditch, about how far from the river have you cultivated?

A. Well, it is not so wide?

Q. Less than half a mile?

A. Yes, a little less. I would put it at something more than a quarter of a mile.

Q. I suppose it is a sort of an irregular distance?

A. Yes, sir.

Q. Some places it is wider than others, is it not?

A. Yes, sir. The variation on that side is not very great.

27 Q. Is there considerable variation on the opposite side, where there is no ditch?

A. Yes, sir.

Q. One-half a mile is about the widest of that side, is it not?

A. Yes, sir.

Q. That you have plowed?

A. Yes, sir, I have plowed out about half a mile.

Q. That is the farthest from the river on that side that you have plowed?

A. Yes, sir.

Mr. SPRINGER to the court: I will now be sworn myself as a witness.

Testimony of Frank Springer.

FRANK SPRINGER sworn:

I am acquainted with the tract of land that is shown by the plat attached to the patent in this case; this is a reduced copy, but a photograph copy of the patent. I know the boundaries of the tract of land described in the patent, as shown by the plat attached to the patent. I also know the locality of the lands described by Dawson as occupied by him on the 1st of January, 1891; and I know that that land is within the boundaries of the tract described in this patent. It is very nearly in the middle of the tract, and would be about the spot I have marked with the pencil here. It would come on this patent just about at that part of it (indicating), so that it would be substantially in the middle of it. That is all I desire to testify about.

Plaintiff rests, with the exception of proof as to the children of Charles Beaubien.

28 Mr. JONES: I desire to make a formal motion at this time that the court instruct for the defendant, for the reason that plaintiff has not shown a good chain of title from Lucien B. Max-

well to it, and has not shown that the lands occupied by the defendant are not the lands exempted from the deeds.

Motion overruled by the court.

Exception reserved by Mr. Jones, counsel for defendant.

Defendant's Case.

Opening statement of defendant's case made to the court and jury by Mr. A. A. Jones, counsel for defendant.

Testimony of Zenus Curtis.

ZENUS CURTIS sworn.

Direct examination by Mr. A. A. JONES:

Q. What is your name?
A. Zenus Curtis.
Q. Where do you reside?
A. Colfax county, New Mexico.
Q. How long have you lived there?
A. Since 1867.
Q. What was your father's name?
A. Joel W. Curtis.
Q. Did he go up to the Vermejo at that time with you?
A. Yes, sir.
Q. How long did you live there upon the Vermejo at that time, after first going there?
A. Well, sir, I lived on the Vermejo until 1872, I think it was.
Q. And then where did you go?
29 A. I went to Colorado to school about two years, and then I lived on the Johnson prairie.
Q. How far is that from Vermejo?
A. About forty or fifty miles.
Q. Then did you afterwards move back to the vicinity of the Vermejo?
A. Yes, sir.
Q. How long have you been living in the vicinity of the Vermejo this last time?
A. Since May, 1873, up until 1891.
Q. Do you know John B. Dawson, the defendant in this case?
A. Yes, sir.
Q. How long have you known him?
A. Ever since I was born. Ever since I can remember.
Q. Do you know where he resides?
A. Yes, sir.
Q. Where is it?
A. He lives on the place that he bought from Maxwell.
Q. In what county?
A. On the Vermejo, in Colfax county.
Q. How close to him have you lived from 1873 to 1891?
A. About twelve miles.

Q. Did you ever go down into that country there where Dawson lived?

A. Yes, sir, frequently.

Q. Are you acquainted with the people in that country up there?

A. Yes, sir, well acquainted with them all.

Q. Do yo- know who claimed to own the land on which Dawson resided?

A. Yes, sir.

Q. Who was it?

A. Mr. Dawson.

30 Q. Do you know how much land he claimed to own?

Objected to by plaintiff's counsel on the ground that it is not competent for the witness to state in a general way how much the defendant claims.

Objection overruled by the court.

Exception reserved by plaintiff's counsel.

A. Yes, sir.

Q. How much was it?

Objected to by plaintiff's counsel for the same reasons.

Objection overruled by the court.

Exception reserved by plaintiff's counsel.

A. He claimed from the dam on the Vermejo above his house to a rock fence below his house, and all drainages from either side.

Q. Are you familiar with that country in there?

A. Perfectly.

Q. Give a general statement to the jury of the cañons and typography of the country.

A. Well, on the west side is a cañon below the house that they call Coal cañon, and there is one below there comes in that they call Lacey cañon. It comes in below Dawson's claim. It heads on his claim. And on the east side the first cañon is called Rail cañon, and the next cañon below is Spring cañon. That comes in below Dawson's fence. It heads on the land he claims. The next cañon is Saltpeter cañon. It comes in at the lower end of the entire purchase of Dawson and Curtis.

Mr. SPRINGER: I object. This witness has not shown any competency to testify as to the "entire purchase" of anybody.

Objection sustained by the court.

The COURT to witness: You have reference to the marks you know to exist on the ground, on the surface of the territory

31 in dispute. Just have reference to that exclusively. That is what you are called upon to describe to the jury—the marks on the surface of the earth by which you know the extent and boundaries of the defendant's claim.

WITNESS:

A. He claimed the head of these cañons I spoke about.

Mr. JONES to witness:

Q. Go on, Mr. Curtis, describe the boundaries of this tract of land.

A. This rock fence I spoke of; It just runs across the Vermejo valley, I think, about one thousand yards, and from there I don't know just where the lines run. They run parallel with this rock fence that he claims. It takes in the head of this Saltpeter cañon and all of Rail cañon.

Q. Do you know anything about the time when that line was established?

A. I remember when they went up to establish the lines, but I don't remember the dates.

Q. State what you know, if anything, as to the understanding of the people in that vicinity there as to Dawson's boundaries.

Mr. SPRINGER: I object to the witness stating what the understanding of the people was. That certainly is not competent evidence. It is for the boundaries themselves to speak loudly enough to the people, without this gentleman testifying as to what the understanding was.

Mr. JONES: I desire to prove by this witness that the people talked about these boundaries and recognized Mr. Dawson's claim, and that it was generally understood among the people that he did claim this land and was occupying it. It goes to the matter of notoriety of his possession.

Objection sustained by the court.

Exception reserved by defendant's counsel.

32 Q. State whether or not you heard any people in that neighborhood discussing the boundaries of Dawson's.

A. I have, several times.

Q. State what was said at those conversations.

Objected to as incompetent by plaintiff's counsel.

Objection sustained by the court.

Exception reserved by defendant's counsel.

Q. What has been your business up there, Mr. Curtis?

A. Cattle business.

Q. How long have you been running cattle in that country?

A. Since 1873 up until the spring of 1891.

Q. How far from Mr. Dawson's ranch were your headquarters?

A. About twelve miles.

Q. When you first went to that country, what other cattlemen was there in that vicinity? I mean in 1873.

A. Was not any, except the Dawsons.

Q. Who had cattle with you, if any one, over on your place, near that place?

A. Thomas H. Dawson and a brother of mine, F. M. Curtis.

Q. Who lived down on the Vermejo, just below Dawson's place?

A. Mr. Lacey.

Q. Did he own cattle?

A. Yes, sir.

Q. Do you know where he kept them?
A. Yes, sir, I do.
Q. State where it was.
A. On the prairie east of Dawson's place.
Q. Who lived below Lacey?
A. My father, J. W. Curtis.
Q. Did he have any cattle?
33 A. Yes, sir; he had a few.
Q. Where did he keep his cattle?
A. In the mouth of Saltpeter cañon and on the Vermejo below his house.
Q. How many cattle did he have?
A. He had something over a hundred head.
Q. Where does that Saltpeter cañon empty into the Vermejo?
A. It comes in close to the lower end of what was called the "O'Donnell place," on the Vermejo.
Q. How far is that O'Donnell place from the Dawson place? How far is it from the O'Donnell place to Dawson's place—that stone wall?
A. I don't know exactly; four or five miles, I think.
Q. How far is it from the mouth of Saltpeter cañon up the cañon to a point where that line extended from this stone fence would cross the cañon?
A. I don't know exactly where this line would cross the cañon, but I would think it was about eight miles from where I judge this line would cross the cañon.
Q. Your father's cattle run in the mouth of this cañon and out on the prairie?
A. Yes, sir.
Q. Who lived below your father on the Vermejo?
A. From 1871 to 1875–'6–'7, Dick Miller and Taylor Maulding.
Q. Did they own any cattle?
A. Yes, they owned some.
Q. Where did they keep their cattle?
A. They kept them out on the prairie somewhere. I don't know exactly where they did keep them, but they were out on the prairie.
Q. Did they ever come up in this country where Dawson lived?
A. No, sir.
34 Q. What was the method or custom of running cattle in those days, Mr. Curtis?
A. Well, each man had a range that he claimed for his range, where he run his cattle; and they tried to keep them separate, and did keep them separate, except on the prairie; and on the prairie they kept them separate all they could, but of course they could not keep them all separate.
Q. In what way would each man keep his cattle separate from the cattle of other men?
A. They would bring them home and brand them in the summer time, and then turn them loose on the range—gather them in from other places and turn them loose. In fact, they did not stray

off in those days; they staid in certain places; they had plenty of grass and water, and hadn't any hankering for leaving.

Q. Up to what period of time were each man's cattle kept separate from his neighbor's?

A. About 1881 and 1882, and they tried to keep them separate until 1883 or 1884, and after that. They staid separate a good part of the time after that, these old stocks of cattle; they staid separate from the others.

Q. Did Mr. Dawson have any cattle during the time you lived up there?

A. Ever since he come there in 1868 he has had cattle, hogs and horses.

Q. Do you know where he kept his cattle, hogs and horses?

A. Yes, sir.

Q. State where it was.

A. In Saltpeter and Rail cañons, Coal cañon, and, in fact, all over this land I mentioned that he claimed.

35 Q. During the time you have been in that vicinity have other people left any cattle in there? I will confine myself to the period up to 1883, or 1884—prior to that time did anybody else have any cattle in there?

A. No sir; none that pretended to hold them there. Of course, there was scattering cattle in there at different times in 1882 and 1883.

Q. Prior to 1882 how was it?

A. I don't think there was any cattle in there at all except Dawson's.

Q. How has it been with reference to this property since 1882?

A. There has been other cattle in there, but not held in there until the company bought the cattle from the settlers.

Q. When was that?

A. That was, I think, in 1887.

Q. What is this land in Dawson's tract suitable for?

A. Most of it is for grazing.

Q. Has Mr. Dawson any improvements on that place?

A. Yes sir.

Q. State what they are.

A. He has dwellings, orchards, fences, wire fences, farming land, cultivated land, ditches.

Q. Where are the fences on the land?

A. He has a fence across by the dam, that runs round and takes in most of Rail cañon. The last time I was up there the fence did not take in all of Rail cañon, but very near all of Rail cañon, and his fence takes in about all of Coal cañon.

Q. On his lower boundary there, what is there?

A. There is a fence across there—this rock fence I spoke of. The bottoms are all farmed.

Q. Where is the mouth of Coal cañon?

A. It is about a half mile below Dawson's dwelling, on the west side of the river.

Q. Is it above the rock fence or below it?

36 A. It is above the rock fence.

Q. Where is the mouth of Rail cañon?

A. It comes in just opposite his house, on the east side of the river, above the rock fence.

Q. How far north does Saltpeter cañon run with reference to the head of Rail cañon?

A. It kind of circles the head of Rail cañon to some extent and runs in a kind of north direction from Rail cañon, I think. There is just a small divide between Saltpeter and Rail cañon.

Q. Can you illustrate what you desire to say by reference to this drawing, Mr. Curtis? Where are these cañons and where do they empty into the river? (Showing witness map.)

A. This is Saltpeter cañon (pointing to place on map). It empties into the Vermejo about the lower edge of the O'Donnell place. And this is Spring cañon; it empties in below the rock fence. And this is Rail cañon; it empties into the river above the rock fence, between the dam and the rock fence, on the east side of the river. And this is Coal cañon; it empties from the west into the river, between the rock fence and the dam, just below Dawson's dwelling.

Q. What kind of a line is this round here; that is, what is the situation of the surface of the earth?

A. Well, this is the divide (referring to the marks on the map). The dividing ridges between this Saltpeter cañon, and what they call Curtis cañon, runs up to this point, and from here up it is a dividing ridge between Saltpeter cañon and Crow creek; then it runs round, and this is a dividing ridge between Rail cañon and Stout cañon, and what we call Five Dollar cañon. This is the cañon. This is the divide. This is Saltpeter. This is the divide between Caliente drainage and Saltpeter drainage, and then from here to the river is the dividing ridge between Rail cañon

37 and Stout cañon; that empties into the Vermejo also, above Dawson's, and then it crosses the river here at the dam, and from there this is the dividing ridge here between a cañon they call Stag cañon, that comes in from the west side of the river, and this Coal cañon; and this ridge here is the dividing ridge between the head of Coal cañon and Van Bremmer cañon, and this part down here (indicating on map), this is the dividing ridge between the head of Lacey cañon that empties into the Vermejo below Dawson's rock fence and Van Bremmer, and from there this line runs to the river to the rock fence.

Q. What kind of ridges are these around there and these divides?

A. Well, some of them are pretty heavily timbered and others are covered with brush oak.

Q. Are the ridges well defined on the surface of the earth?

A. Yes, they are.

Q. After your cattle began to mix somewhat, along in 1884, what was the custom at round-ups there with reference to this land of Dawson's and the cattle that were ranging in that vicinity?

Counsel for plaintiff object to any testimony as to "custom," unless it is established by preliminary questions what was done.

Question withdrawn by Mr. Jones.

Q. What was done with the cattle with reference to this land?

A. We all gathered our cattle that got over that way, except Gus. Dawson. He had some cattle in this Saltpeter cañon that he kept over there, and sometimes he worked with our outfit, and we would sometimes take his cattle, the cows and calves, to the Caliente, to our pens, and brand them and start them back to his place, and they would go right back to Saltpeter; but most of the time we branded right there at his place, that is, branded his calves and throwed ours out.

38 Q. What proportion of your cattle ever got over into these cañons even after 1882?

A. Probably there would not be over ten per cent. at the outside; not over four or five per cent. of them over there, probably. We would go over there sometimes, and we had five or six hundred head, and sometimes we would find three or four, and sometimes not over seven or eight, sometimes forty or fifty, and we always respected that as being Dawson's, because he always claimed it, and we respected it as his claim, as his range; and even the prairie cattle and the cattle that belonged to the Maxwell land grant, this long H brand, they took their cattle out of there all the time up the time of the purchase in 1887 that I spoke of, and everybody else did. There was other parties that had cattle on the prairie that drove up there in the winter and they took them out in the spring.

Q. You are speaking now with reference to the time subsequent to 1882?

A. Yes, sir.

Q. When was that long H brand started?

A. It was started in 1875 or 1876; I would not be positive.

Q. Where was the ranch and range of that long H brand?

A. On what is known as Crow Creek vega.

Q. How far is that from this land claimed by Dawson?

A. I judge about twelve or fifteen miles. Every one at that time respected that as being Dawson's, all that country there. Now I run what was known as the "Crocker outfit," that was the Caliente Mountain boys——

Counsel for plaintiff object to the witness making statements to the jury not called for by the questions propounded to him.

Objection sustained by the court.

39 Q. What was the Crocker outfit you spoke of?

A. A cow outfit, running and taking care of cattle.

Q. When was that started?

A. I think that was started in 1880.

Q. Whose cattle did that association run?

A. When they first organized they run the Curtis cattle, old man Dawson's, A. G. Dawson's, Hunt Brothers', Armstrong's, and several other small brands.

Q. Where was the home range of these cattle—these different cattle?

A. Curtis Brothers and old John Dawson and Gus. Dawson, they run their cattle together on the Caliente, at the mouth of what we call Dead Horse cañon and Chimney cañon and Five Dollar cañon; and the Hunt Brothers kept their cattle at the mouth of Cottonwood cañon and on the main caliente above.

Q. How far were those places from Dawson's place?

A. From Mr. Dawson's house it was about fifteen miles.

Q. Was there any other cattle between those places and Dawson's place?

A. No, sir, I don't think there was. There was not any cattle running in there, except old man Stout had a few; he kept them in this Stout cañon; but that was farther back than the organization of this Crocker Association.

Q. During the years that you lived there, where did Mr. Dawson keep his cattle?

A. He always kept them in Rail cañon and old Saltpeter and Coal cañon, and around the ranch.

Cross-examination by FRANK SPRINGER, Esq.:

Q. Did Dawson have his cattle under herd?

40 A. A few milch cows, he did; but there was some he did not.

Q. What kind of cattle did he have principally?

A. Stock cattle.

Q. Where did his stock cattle range?

A. Why, they ranged in Rail cañon and Saltpeter and Coal cañon and on the head of Lacey cañon, and all around through his ranch.

Q. Were they under herd in these cañons?

A. No, sir, they were not under herd; they were running loose in these cañons. He had some Mexicans looking after them now and then, and Gus., and in fact everybody, Gus. and me——

Q. Just confine yourself to my questions, please. Did Dawson's cattle range on both sides of the Vermejo?

A. Yes, sir.

Q. Did they range in any other cañons than those you have mentioned?

A. Why, once in a while I guess they would get off these cañons I have mentioned.

Q. Did they ever range in a cañon called Stag cañon?

A. Not at that time they did not.

Q. At what time do you refer to?

A. Well, along say from 1873 up until 1880 or 1881.

Q. Between from 1873 to 1881, you say, they did not range in Stag cañon?

A. Once in a while, along the latter part of this time a few scattering ones would be in there. I have seen some few in there.

Q. How was it before 1873?

A. Well, I don't remember where he kept his cattle before that.

Q. After 1881 did Dawson's cattle range over in Stag cañon?

41 A. After he bought the old gentleman Dawson's, they did then.

Q. When was that?

A. That was some time in 1881. I don't remember just when it was.

Q. Did these stock cattle of his range over on the Van Bremmer cañon?

A. No, sir.

Q. They never went over there at all?

A. Not while he owned them, I don't think they did; they may have been a few, but I don't know.

Q. Did they ever range over in the Caliente cañon?

A. Yes, sir.

Q. During what times?

A. He had cattle in there after he bought these cattle until he sold them to the Maxwell Cattle Company.

Q. When did Dawson's cattle begin to range over on the Caliente?

A. It was after he bought these cattle. I don't know when it was.

Q. Previous to 1881 did any of Dawson's stock cattle ever range on the Caliente?

A. No, sir, I don't think he ever had a cow there.

Q. Did he have a bull or a steer?

A. I mean cattle—bull, steer or cow.

Q. Did any of his stock cattle, prior to 1881, ever range across the divide in Crow creek?

A. I never saw any there.

Q. Ever see any over in the cañon called Curtis cañon?

A. No, sir.

Q. All this time these stock cattle of his, I understand, were not under herd?

A. No, sir.

42 Q. Of their own accord they confined themselves to these cañons which you have mentioned as being in Dawson's claim?

A. Yes, sir. I never saw any of his cattle outside of these cañons. I have seen them on the divides, and I have seen them down in these cañons.

Q. What divides do you mean?

A. I mean the divides of Saltpeter and Curtis cañons, Saltpeter and Crow creek, Saltpeter and tributaries of Caliente.

Q. They went outside of Saltpeter cañon up to the divide?

A. I have seen them along the ridges.

Q. Take this Saltpeter cañon, where you used to see Dawson's cattle ranging, how much of a space is there in there?

A. You mean inside this space I speak of that Dawson claim?

Q. Yes, sir.

A. This Saltpeter cañon?

Q. Yes, sir.

A. I judge it would be about five or six thousand acres, by the looks of it.

Q. How wide is Saltpeter cañon on an average?

A. I don't know, hardly, how wide it would be. In some places

it is two or three miles wide; in other places it is only a quarter of a mile wide.

Q. What are the boundaries of that cañon on each side—how is it marked?

A. Why, it has ridges running around.

Q. Are there deep bluffs on each side of it?

A. No, sir; it is just rough hills.

Q. Are there steep bluffs on either side of it at any point?

A. You mean on the Saltpeter cañon? Yes, there is steep bluffs down at what is known as "the Narrows," in the cañon.

43 Q. Is that within the land that you describe as belonging to Dawson?

A. Part of it, I think, is. I don't know, really, where the line is exactly; where I imagine it would run, there is part of it his—the lower edge of it.

Q. From Saltpeter cañon going westward, which is the next cañon you come to?

A. It is owing to where you leave Saltpeter. It depends on what point you start from.

Q. Starting from about the head of it.

A. Starting from the head of it, you would strike Five Dollar cañon, the tributary to Caliente, right at the head.

Q. What I want to know is what is the next cañon that runs parallel to Saltpeter on the west?

A. The first cañon that runs parallel with it, I think, two or three miles, is Stout cañon, the head of it; then comes Rail cañon.

Q. Is this cañon you call Stout cañon, is that between Saltpeter and Rail, all the way?

A. No, sir; Rail is between Stout and Saltpeter, and not all the way. It heads up on Stout cañon and runs parallel with the head of Saltpeter.

Q. Take the whole distance of the two cañons, Rail is next cañon to Saltpeter, is it?

A. Except down about the mouth, there is Spring cañon, between Rail and Saltpeter.

Q. How long a cañon is Spring cañon?

A. From the river, I judge, it would be about four miles.

Q. How far is it from Saltpeter cañon across to Rail cañon, take the average distance?

A. I don't know, taking the average distance how far it would be.

Q. Give us your best judgment about it.

A. The nearest point from the head of Rail, say from the
44 drainage of Rail to the drainage of Saltpeter, it is not one foot. It is the divide, and drains right down. Say, from the bottom of Rail cañon to the bottom of Saltpeter, it must be probably two or three hundred yards. Then, at the mouth, I think, it would be from two to four miles wide. It is so rough I could not tell you.

Q. Take it about half way up from the mouth of the cañon to the head, how far would it be?

A. Say about the head of Spring cañon, I could not tell you; the

drainage is so close together, I could not tell you how far. The drainages are right together. The cañons themselves are probably a mile apart.

Q. About a mile apart from the head of Spring cañon?

A. Yes, sir; I don't say from the bottom of the cañon, but from the bluff.

Q. Take it from the bottom of the two cañons, about how far would they be there?

A. I think they would be two or three miles there.

Q. Now at that point how deep would you say these two cañons are, Saltpeter and Rail?

A. I would not have any idea how deep they were.

Q. Are they several hundred feet deep?

A. Yes, they are several hundred feet deep, I would think.

Q. What kind of ground is there in the bottoms of those cañons?

A. Right in the bottom of the cañons it looks like a kind of a loam or black soil.

Q. Is that open or woody?

A. Some is woody and some open.

Q. Does this open ground in the bottom of the cañon occur all around or in patches?

A. It is in patches in places. After you get up quite a ways there is quite a little body of it.

45 Q. Take the sides of the cañon around there, what kind are they?

A. Rocks, oak brush and piñons.

Q. Then up on top, between these cañons, what is the character of the ground?

A. Rough, broken country, rocks, some timber, most of it piñon timber; some of it is pine.

Q. Is there any running water in those cañons there, either Rail or Saltpeter?

A. Yes, there is permanent water in Rail, and in Saltpeter water runs sometimes and sometimes it does not.

Q. Where does that water in Rail cañon start from?

A. I think about two or three miles from Dawson's house; from some springs.

Q. Above that there is no permanent running water?

A. No, sir.

Q. On the other side of the river, on the southwest side of the river, what is the character of Coal cañon as to the land in the bottom of it?

A. At the mouth of the cañon is a very nice flat; I judge, about a mile long and probably one-half a mile wide.

Q. That is a mile up the cañon?

A. Yes, sir, that is what I judge it to be.

Q. Then above that?

A. It is very narrow and rough.

Q. Does that continue clear up to the head of it?

A. It continues till you get right to the head of it; then there is a small opening there, or flat.

Q. What is the character of the ground on the sides of Coal cañon?

A. It is rough rocks and ledges, spruce timber, and above there is some piñon timber.

46 Q. Is Lacey cañon about the same kind of a one as Coal cañon?

A. Not quite as rough as Coal cañon, but it has rocky ledges and piñons and rather low hills in the bottoms of the cañons, covered with piñons, and ledges around the top.

Q. What is the character of the ground on top between Lacey and Coal cañons?

A. Down say about a mile west, it is piñon hills. At the head of the cañon there is quite a big mesa, bordered with ledges of rock on top.

Q. Is there any timber on the top between these two cañons?

A. Yes, sir.

Q. Any rock there?

A. Yes, sir.

Q. Any water in either of these cañons; running water?

A. No, sir, there is no permanent water to speak of. There is a little spot in Coal cañon, but not enough to amount to anything; probably one or two head of cattle could water there. At other times there is a good deal of water there.

Q. About how wide a cañon is Lacey cañon, the portion of it that is within what you call Dawson's claim?

A. I don't know just where the line crosses that cañon, but it is not a very wide cañon.

Q. Are the bluffs on each side of it steep?

A. Yes, sir, they are pretty steep on each side?

Q. Is that the fact about Coal cañon?

A. On the west side they are a good deal steeper than on the east side. It has a more gradual steep slope on the north side, and part of it has got steep, rough ledges; no one could get down from it.

Q. About how deep are these cañons?

47 A. I would think seven hundred feet. I could not say how deep they are.

Q. How is the ground along the edges of the valley of the Vermejo, on either side of the river through Dawson's claim?

A. Well, the biggest part of it is good cultivated land—good farming land.

Q. When you get back to the end of that land, what do — come to?

A. You mean from the east and west? You come to rough, rocky hills.

Q. Take it on the east side of the river—I suppose it would be really the northeast side there—about how far from the river is it until you come to these rough, rocky places you speak of?

A. Different distances; some places I judge it would be two or three hundred yards, and some places one-fourth of a mile, and at

drainage is so close together, I could not tell you how far. The drainages are right together. The cañons themselves are probably a mile apart.

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Q. Any rock there?

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Q. Take it on the east side of the river—I suppose it would be really the northeast side there—about how far from the river is it until you come to these rough, rocky places you speak of?

A. Different distances; some places I judge it would be two or three hundred yards, and some places one-fourth of a mile, and at

the mouth of Rail cañon it is quite a distance—a mile and a half, probably.

Q. Take it from the mouth of Rail cañon to the lower end of Dawson's claim, for instance, what constitutes the border of the valley on that side?

A. The river on the west or southwest, and on the north or northeast is this Rail cañon. The mouth of Rail cañon is a good, nice flat.

Q. What I want to know is what constitutes the border of the valley on that side of the river.

A. Why, as I say, bluffs and rocky hills and mountains.

Q. About how high are these?

A. They are quite high bluffs. I don't know how high they are: several hundred feet.

Q. Are the slopes steep or gradual?

A. They are tolerable steep.

Q. Could you drive up them with a wagon?

A. No, sir; you could hardly ride up horseback; in some places you could not.

48 Q. Now, on the other side of the river, what forms the border of the valley?

A. Mountains—rocky, rough mountains.

Q. Are they similar to the ones you have described on the northeast side?

A. Yes, sir.

Q. Are they steep, also?

A. Yes, sir.

Q. Could you drive up them with a wagon?

A. No, sir.

Q. Who was in charge of the brand of cattle that you call the long H when its home ranch was in Crow creek in 1875 and 1876?

A. Lonny Horn was the owner and Frank Putnam and John Morgan were the foremans.

Q. I understood you to say that the cattle of this long H brand were taken away from the claim of Dawson every spring by the Maxwell Land Grant Company?

A. They were driven away when Horn owned them. He always kept them out of there—drove them out of there whenever they come up in that country; and also the Maxwell Company kept them out until they purchased from the settlers in the mountains. There was very few ever got up there for Horn.

Q. When did they begin to get up there in any considerable numbers?

A. After the Maxwell Company bought them.

Q. When was that?

A. I don't remember just when it was.

Q. You say after that they come up onto Dawson's ranch?

A. Not very often. They did, say along in 1880. That was the first I ever noticed their coming up to amount to anything. I think it was in 1880, 1881 or 1882; I don't know exactly just what

year it was. It was between 1880 and 1883 that I noticed say 10, 15, 20 or 30, something like that.

Q. When you first noticed them come up there, did they still belong to Horn, or had they been sold out to the Maxwell Company?

A. When I first noticed them coming up in there, there was one or two come up there; a couple of cows, I think, was the first I ever noticed. That was when Horn owned them. After Horn sold them, I think it was in 1882 or 1883, they kept getting up there every fall. Every time the long H would come in there they would get from one to probably a dozen.

Q. What did they do with them?

A. They would take them to the prairie.

Q. They took them generally from the mountains to the prairie in those days, did they?

A. Yes, sir.

Q. Was there anything to hinder these few cattle coming onto this range when they got there?

A. Nothing but Gus. Dawson and me. We would run them out whenever we found them in there; and my brother Frank he would run them out also.

Q. You would run them out from where?

A. From Saltpeter, because we knew they would get onto our ranch if we did not run them out of there.

Q. Where was your ranch?

A. On the Caliente. We would be riding through hunting. Lots of times we would be riding in there to see what we could see; sometimes cow-hunting, sometimes deer-hunting, other times branding calves.

Q. So when you found any of the prairie cattle on Dawson's claim, or anywhere in that region, you drove them out, did you?

A. When we found them anywhere in this Saltpeter country, or anywhere close to the foot-hills, we drove them out near Crow creek, or anywheres in there.

50 Q. Now at that time, what were you doing over there in the Saltpeter country?

A. I said sometimes we would be hunting, helping Gus. branding his calves, and once in awhile we would find some of ours over there and we would brand the calves and drive them back there before the round-up started.

Q. Did you have cattle running in there?

A. In these late years I speak of they would get over there, and finally a good many got over there, but we kept crowding them back all the time.

Q. Didn't your cattle run over there in the head of Saltpeter?

A. Not until along in 1884 and 1885. From 1883 on, I think, we left our cattle over there.

Q. Did you and those associated with you have your cattle under herd?

A. No, sir; we did not at this time.

Q. Or previous to that time?

A. When we first went there, in 1873, we did. The first summer we close-herded them.

Q. Who do you mean by "we"?

A. My brother, Frank Curtis, and my grandfather, Thomas H. Dawson.

Q. Where did you close-herd your cattle that year?

A. At the mouth of Dead Horse cañon and Chimney cañon and along on the Caliente.

Q. The next year you turned them loose, did you?

A. Yes, sir; we never herded them any more; just looked after them in the day-time; rode after them most every day.

Q. From that time on they ranged throughout that range generally, did they?

A. No, sir; they never got three miles from home, for two or three years.

Q. Was there anything to prevent their going?

51 A. Nothing except the good grass and water prevented them from going. If we would catch one two or three miles from home, we considered it a long ways those days, and we would start them down the river towards Caliente.

Q. Then you rarely had to go on your round-ups more than two or three miles from home, did you?

A. In those times we did not have any round-ups; just drove through there, caught the calves and took them home and branded them.

Q. When did you first begin to have round-ups in that neighborhood?

A. I think it was about 1878 or 1879.

Q. Were there a good many different persons in the neighborhood who had cattle during the same time you had them?

A. Not until 1876, when the Hunt Brothers were above us. They were then on Red river, about ten or fifteen miles above us, and then in the break, there, old man Young had a few cattle, but they never mixed with ours or ours with theirs. I think they come down in 1878 or 1879, and brought their cattle down on the Caliente.

Q. Did you have cattle running in that neighborhood in 1880 and 1881?

A. Yes, sir.

Q. 1878 and 1879?

A. Yes, sir; I had cattle from 1873 clear on until I sold to the Maxwell Company.

Q. From 1873, as I understand, it is when you first took the cattle in there?

A. Yes, sir.

Q. The time when you first began to have round-ups was about 1879?

A. Yes, sir.

Q. What occasion had you for riding around over this country where Dawson claimed?

52 A. Well, after 1877, our cattle spread a good deal more—say, 1877, 1878, 1879, 1880—as far as Crow creek, and as far

as Saltpeter. Other times I was there hunting, and when I would see one of Gus.' calves, or uncle's, I would brand it. They had hogs in there, too.

Q. Who had hogs in there?

A. Dawson.

Q. Were you in his employ at that time?

A. No, sir; I was off, and on. I would go down to his place and work, but not often.

Q. When you were in there you were looking after your own cattle?

A. I was deer-hunting, and just looking around, learning the country, more than anything else. After 1878 and 1879 I was looking after cattle. We always rode in the spring and brought our cattle back; they would always scatter, more or less, in the winter.

Q. Between 1873 and 1879, when the cattle began to scatter, as you say, was there anything to prevent your cattle from going on Dawson's ranch?

A. Nothing, only we driving them back.

Q. Where did you say Lacey kept his cattle during these times?

A. He kept them on the prairie.

Q. Lacey's residence was on the Vermejo, was it not?

A. Yes, sir.

Q. As I understand you, it was the next place below Dawson's stone wall.

A. Yes, sir.

Q. It was above the mouth of Saltpeter cañon, was it not?

A. Yes, sir.

Q. Was Mr. Lacey a cattle-owner on any considerable scale?

A. Yes, sir; he owned lots of cattle; all sorts of cattle.

Q. Did he keep his cattle under herd?

A. No, sir.

53 Q. Did he have any of them around his house?

A. A few cows, was all.

Q. Where did they range?

A. Right there at his house in the hills, around his house.

Q. Ever get back as far as Rail cañon or the head of Saltpeter cañon?

A. They did, along in 1881 and 1882; from there on they did. He had some in there in 1880; that was the first I noticed them.

Q. Where did you notice them?

A. Why, I noticed them, some in Caliente and some in Saltpeter.

Q. Notice any of them in Rail cañon?

A. No, sir; I don't know as I ever noticed them in Rail.

Q. Those you noticed, were they milch cows?

A. They were stock cattle that came in from the prairie, and some of those long H brand.

Q. Did Lacey engage in raising thoroughbred cattle during some of that time?

A. Lacey and Coleman had some thoroughbred cattle; also fine cattle.

Q. Where did they keep those?

A. Right at the mouth of what was called Ben cañon and Caliente; the mouth of Ben cañon runs into Caliente. Then they kept them on Red river awhile. They kept them in what is called "Gotchupin" cañon awhile.

Q. Do you know anything about that herd of fine cattle being kept in Rail cañon?

A. No, sir; I don't think he ever aimed or tried to keep them there, that I know of.

Q. Do you know of their being kept there?

A. No, sir; they never were kept there; never was thought of; never was any kept in there at all, of any kind, except Dawson's.

54 Q. You are quite certain these fine cattle of Lacey's were never kept in Rail cañon?

A. Yes, sir.

Q. At any time?

A. They never were.

Q. The next man below there was your father?

A. Yes, sir.

Q. Did he have any cattle in those early days?

A. Yes, sir; he had cattle?

Q. What kind did he have—stock cattle?

A. Yes, sir.

Q. Where did they run?

A. He kept them under herd all the time at his place there, at the mouth of Saltpeter and along the river above his house, and out in Saltpeter, most of the time.

Q. Did they ever run in the head of Saltpeter?

A. No, sir; they never got over half a mile above the Vega: I herded them all the time, and some Mexicans.

Q. Where did the Miller and Maulding cattle run in the first days when you were there?

A. At that time I was too young. I don't know where they did keep them, but I heard they kept them on the prairie. They did not keep them in the mountain-, because I was in the mountains and they were not there; but I don't know exactly where they did keep them.

Q. How old were you when you went there in 1873?

A. I was born in 1857.

Q. You went there in 1867. You were ten years old when you went there.

A. Yes, sir. Miller did not have any cattle in there from 1873 on. I don't know what was in there before that, because I was not up in that country—only fishing.

55 Q. Never was up in which country before 1873?

A. Caliente.

Q. Take it along in Saltpeter—you were all along that before 1873, were you not?

A. No, sir. I was up there once, I believe, before 1873, with a party hunting; but I don't remember much of it until 1873 and after.

Q. Were you ever up in Rail cañon before 1873?
A. Yes, sir.
Q. What doing?
A. Just riding up in there: I went up there one or two trips after some horses of my uncle.
Q. Who do you mean by your uncle?
A. John B. Dawson.
Q. You found those horses of his up in Rail cañon?
A. Yes, sir; I found them at this spring both times.
Q. And the hogs you spoke of—they belonged to your uncle, John B. Dawson, did they?
A. Yes, sir.
Q. Where do you live now?
A. About six miles due east of Maxwell City, in Colfax county, New Mexico.
Q. What are you engaged in at present?
A. Working after sheep.
Q. Are you in the employ of Mr. Dawson now?
A. Yes, sir.
Q. That is, John B. Dawson, this gentleman here?
A. Yes, sir.
Q. How long do you say this rock fence of Dawson's is?
A. I would think it is about a thousand yards long.
Q. It runs across the river, don't it?
A. Yes, sir.
Q. Is there any particular place it runs to on each side of the river?
56 A. It runs to a bluff of rocks on each side of the river.
Q. It crosses until it reaches one of these steep bluffs, does it not?
A. Yes, sir.
Q. As I understand you, it runs from the river on each side back to the ridges—those steep bluffs that you cannot ride up.
A. Yes, sir.
Q. Now, you spoke of Dawson having a fence there that takes in nearly all of Rail cañon.
A. Yes, sir.
Q. Where does that fence begin and where does it run to?
A. It commences there at his dam and it runs on the divide between Stout cañon and Rail, and across Rail. It crosses Rail about half way across the cañon, very nearly two-thirds of the way; then it runs right back down to a bluff.
Q. When was that fence built?
A. It has been built three or four years.
Q. Is there any fence around any part of this divide that you have described here and the outer part of Dawson's claim?
A. The Maxwell Company has a beef pasture that takes in the head of Saltpeter cañon and the head of Rail.
Q. That is up beyond this fence that Dawson built?
A. Yes, sir.

Q. Now, this fence Dawson built across Rail cañon, does that extend over as far as Saltpeter cañon?

A. Just to the divide between Rail and Saltpeter.

Q. Then, that fence and the rock fence are all the fences that you know of built by Dawson, except those right around his cultivated land?

57 A. Well, he has another one—a partition fence between his ranch and this upper fence I spoke of across Rail cañon, about two-thirds of the way up; then he has a partition fence running through there.

Q. Which way does that run?

A. It runs kind of quartering east and west, across the cañon, and joins this main fence I spoke of.

Q. Do you know when that was built?

A. That was built quite awhile ago. It was several years—six or seven years—ago.

Adjourned until two o'clock.

Cross-examination continued by Mr. FRANK SPRINGER:

Q. Mr. Curtis, what cattle did Mr. Dawson have ranging in the region you talked about after 1886 and 1887?

A. I don't remember when he bought those cattle from his father. I think he bought those cattle of the old man in 1886. After he bought those cattle he had some of them up there; not all.

Q. Where had they been before that? Where were they when he bought them?

A. They were promiscuously in Caliente.

Q. Where else besides Caliente?

A. All the tributaries of Caliente.

Q. Didn't any of those cattle of old man Dawson range on Rail cañon and Saltpeter cañon?

A. Some of them was in Saltpeter, but we tried to keep them out all we could.

Q. Who tried to keep them out?

A. My brother and myself and the old man.

Q. Were you working for the old man Dawson?

A. I had his cattle on shares.

Q. That is John Dawson's father?

A. Yes, sir.

58 Q. Where did those cattle range after John Dawson bought them?

A. In the same places.

Q. He let them stay in Rail and Saltpeter cañons if they got there, did he?

A. Yes, sir; he took some cows for milk cows down there. When he would get through milking them he would turn them up Rail, or when they were dry.

Q. Did Dawson have any other cattle in there at any time afterwards?

A. Yes, sir; he had cattle he would buy around from different parties. He bought some from Pat. Lyons.

Q. Has he got those cattle yet he bought from his father?

A. He has got some of them, very few, that he reserved when he sold his cattle to the Maxwell Company.

Q. He sold those cattle to the Maxwell Company, did he?

A. Yes, sir.

Q. That is, the cattle he bought from his father?

A. Yes, sir.

Q. Where were they when he sold them to the Maxwell Company?

A. In the Caliente country; some in the Saltpeter country and Crow creek; scattered around promiscuously.

Q. They were scattered around then, were they?

A. Yes; around in the Crow Creek country and Caliente country, and at the head of Crow creek there was a few.

Q. Weren't they ranging on Saltpeter and Rail cañons, the same as Dawson's other cattle, at that time?

A. There was a few of them in there.

Q. Were they not ranging there just like Dawson's other cattle?

A. No, sir; we drove them out every time we went up there.

59 Q. Before Dawson sold them to the Maxwell Company?

A. They run in there when John Dawson owned them. Yes, they were in there, some of them; not all of them.

Q. Didn't they run in there the same as the rest of his cattle?

A. What few got in there he left in there.

Q. Did he have any other cattle at all there, running in Rail and Saltpeter cañons, outside of his milk cows?

A. No, sir; only some steers he would buy.

Q. Well, how long before that had he had any stock cattle?

A. He has had stock cattle off and on ever since I can remember.

Q. Take it just before he bought those cattle from his father, how many stock cattle did Dawson have ranging on his claim?

A. I don't know just how many he did have. He had moved out some.

Q. Did he have a large herd, or few?

A. Few.

Q. Do you think he had as many as a hundred?

A. I judge he had. I could not tell.

Q. Do you think he had much more than a hundred, all told?

A. In times he would have and times he would not have.

Q. Did he at any time before he bought these cattle from his father have a large herd of cattle there on what you call his claim?

A. I don't remember whether he had any large amount of cattle or not. I know he always had cattle in there. I don't know the extent of the herd.

60 Q. Well, did he have any considerable herd of stock cattle, or was it just his milk cows and such few cattle as are found around the principal ranch?

A. You mean the whole time he has been there?

Q. Yes, before he bought from his father.

A. I don't know of any large herd he has had. He had cattle in there; I don't know how many—cattle, horses and hogs.

Q. Would you say he had, on an average, more than one hundred?

A. I could not tell whether it was more or less than one hundred.

Q. Was there enough of them to cover that range all over, or were they simply scattered through it?

A. They would be scattered round through the range.

Q. How many milk cows did Dawson have during that time before he bought from his father?

A. Sometimes fifteen or twenty; sometimes more.

Q. What was about the most he had at any one time?

A. I could not tell you how many was the most he had.

Q. Do you think he ever had as many as fifty?

A. Yes, sir; I think he did, with calves. I think he had more than that with calves, yearlings and other stock cattle.

Q. I am speaking now about milk cows.

A. That is what he called the milk bunch.

Q. Do you think he had as many as fifty milk cows at any one time?

A. I could not tell whether he had that many or less.

Q. Do you think he ever had as many as one hundred?

A. I don't know about milch cows. I don't suppose he ever had one hundred milch cows; I counted their offspring.

61 Q. Do you think he ever had as many as one hundred head of cattle, of all kinds, grazing there before he bought from his father?

A. Yes, sir; I think he has had more than one hundred.

Q. Do you think he had two hundred?

A. I don't know; I know he has had over a hundred.

Q. You could not say whether he had more than two hundred?

A. No, sir.

Q. Then, when he bought these cattle from his father, was that a large herd?

A. Yes, sir; a tolerable large herd.

Q. After he bought them, some of those cattle ranged upon what he called his claim, did they?

A. They would get over in there before he bought them, and we tried to keep them out.

Q. After he bought them, where did they range?

A. Those that were in there, they just left them in there, and the rest was promiscuously around over the Caliente.

Q. Then, when he got a large herd of cattle, he did not bring them on this range at all, did he?

A. He did not that bunch, but he bought another bunch of eight or ten hundred head that he brought in there.

Q. Where did he buy those from?

A. Bought them on the prairie, east of Red river.

Q. And they were brought in and put on this range, were they?

A. They were.

Q. Whereabouts on the range did they run?

A. All over his land; part of them got over as far as New cañon, I believe it is called; it runs into Van Bremmer; but they
62 got them back as quick as they could. He had some of them inside his inclosure—a few of them.

Q. Did they run in Caliente and Rail cañon to any extent?

A. Some of them were in Rail cañon. I never saw any in Caliente until after he sold them.

Q. Did they run in Saltpeter cañon to any extent?

A. I don't know whether they did or not. Yes, there was some of them got into Saltpeter cañon.

Q. Explain to us exactly where it was he put these cattle?

A. He turned them loose right at his ranch, and they scattered all over the place in each direction.

Q. They ranged over this tract you have described as being his range?

A. Yes, sir.

Q. Were they kept on there by him?

A. Yes; they were kept on there until he sold them, or he tried to keep them there; of course, some got off.

Q. How did he keep them on?

A. By having men ride after them and keeping them back.

Q. Had men riding after them all the time or only at intervals.

A. I think he kept men after them all the time.

Q. When was it he put these cattle there?

A. I think it was somewhere between 1888 and 1889.

Q. How long did he keep them on there?

A. I don't remember. He kept them one winter, I think, and part of a summer.

Q. What did he do with them finally?

A. Sold them to the Maxwell Cattle Company.

Q. Where did they graze after that?

63 A. They turned them out on the Van Bremmer and Caliente, and they ranged from the Pan Handle of Texas clear up to the Snowy range.

Q. Do you mean to say that they immediately scattered out from Texas to the Snowy range as soon as they were sold?

A. Yes, sir; not as soon as they were sold, but there is some of them all over the country; I saw a few of them over the grant lines, but most of them run on the Maxwell land grant.

Q. Where were the cattle when they were sold by Dawson to the company?

A. The bulk of them was on Dawson's place. There was some scattered around in the country.

Q. Where was the bulk of them immediately after they were sold?

A. Van Bremmer.

Q. How did they get over there?

A. Dawson had taken them over there; drove them out of his

pasture; he sold them range delivery, and after he sold them he cleaned out his pastures and drove them over that way.

Q. How about those that were not in his pastures—you say he turned them loose from his range?

A. I suppose they were outside of his range.

Q. When he brought them in from the prairie, you say he turned them loose on his range?

A. Yes, sir, he turned them loose right at his ranch.

Q. They scattered?

A. Yes, sir.

Q. Did he do anything more with them when he sold them to the Maxwell Cattle Company?

A. Only turned them out of them cañons around there—Rail and Coal cañon—outside of his enclosures.

Q. How did he turn them out?

64 A. He had men there turning them out when they would find them.

Q. Did he send men out there regularly, and drive them all out at once?

A. I don't know whether he drove them all out at once or not.

Q. Did you see anybody driving them out?

A. No, sir.

Q. Were you there when they were driven out?

A. I was there off and on when they were taking them out.

Q. Were you there when he sold them to the Maxwell Company?

A. I was there in the country. I was not in the house when he sold them. I came down about a month after he sold them to the company to look at them for the company.

Q. Is it not a fact that these cattle were left right there where they were at the time he sold them, except such as might have been inside Dawson's enclosure—was left right there on Dawson's range?

A. If they had been left there, there would be some there yet.

Q. Is it not a fact that they were left right there where they were, to stray or go where they might go?

A. No, sir. I heard fellows say they helped to drive out some of them. I never saw them driving them out. I heard they were driven out.

Q. All you have been stating about these cattle being driven out from there is what you have heard other people say, is it?

A. I have seen that they are out of there, and I drove some of them out of there for the company myself.

Q. What you say about their being driven out as soon as Dawson sold them—you don't know that of your own knowledge, do you?

65 A. I never seen them driven out; fellows told me who did drive them out.

Q. What you have been testifying about that is what you heard from others, is it not?

A. Yes, sir, about driving them out, except what I drove out myself.

Redirect examination by A. A. JONES:

Q. By whom were you employed at the time you say you drove some of them out?
A. By the Maxwell Cattle Company.
Q. How long did you work for the Maxwell Company?
A. Three years.
Q. In what capacity?
A. I was second foreman of the Maxwell Cattle Company.

Mr. JONES: There is one point I was stopped on this morning I desire to bring up again. I desire to ask the witness what he heard other people say in regard to the ownership of this ranch and the claim of title to it. I did not press that point this morning simply because I wanted to be sure I was right about it; but I believe where title is claimed by adverse possession such conversations are evidence showing the notoriety of the claim. I will ask the witness this question:

Q. Did you ever hear any of the people residing in the vicinity of this tract of land say anything as to its occupation and who claimed to own it?
A. Yes, sir.
Q. State what you have heard people say.

Objected to by plaintiff's counsel on the grounds stated in previous objection to a similar question.
Objection sustained by the court.
Exception reserved by Mr. Jones.

66 Q. Did you ever hear any of the people in the vicinity of Dawson's property say anything, or discuss the boundaries of Dawson's land or his claim?
A. I have heard them talking about how much he claimed, and what they thought to be his.
Q. What did they say about it?

Objected to by plaintiff's counsel.
Objection sustained by the court.
Exception reserved by Mr. Jones.

Q. Do you know what boundaries were generally recognized by the people in that vicinity as being the boundaries of Dawson?

Objected to by plaintiff's counsel because that subject has all been gone over in examination-in-chief.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. I know the cañons that they claimed was his, but the exact boundaries I do not.
Q. State what those cañons were.

Objected to by plaintiff's counsel on the ground that it is not proper re-examination; and second, because the witness' statement is that he knows the cañons they claimed was his.
Question withdrawn.

Q. Who was it that the people there recognized as the owner of the cañons referred to?

Objected to by plaintiff's counsel on the ground that it is a conclusion as to what the people recognized.

Objection sustained by the court.

Q. Did anybody in that neighborhood, so far as you know, undertake to interfere with Dawson in the possession of the land described in his plea, and that you pointed out this morning, while you were living there, until the Maxwell Land Grant Company undertook to fence a part of it?

A. I never heard of any one trying to interfere with him until the Maxwell Company did.

67 Q. Was the extent of Dawson's claim there the subject of conversation frequently among the people residing in that vicinity?

A. Yes, sir; very frequently.

Q. Did the people there ever speak of this land as belonging to any particular person?

A. You mean Dawson's land?

Q. Yes, sir.

A. Yes, sir.

Q. To whom did they speak of it as belonging?

Objected to by plaintiff's counsel.

Objection sustained by the court.

Exception reserved by defendant's counsel.

Q. The land described in Mr. Dawson's plea in this case I will read to you. I will read to you the description of that land. All the land in the valley or drainage of the Vermejo river, in the county of Colfax, Territory of New Mexico, within the following boundaries: Commencing at the dam on said river at the upper end of John B. Dawson's farm, thence running to a high point of rocks on the north side of the Vermejo cañon, thence following along the top of the divide west of Rail cañon to the head of Saltpeter cañon, thence down along the top of the divide east of Saltpeter cañon to a point on a line with said John B. Dawson's rock fence, thence following the line of said rock fence across the Vermejo to the top of the divide, between the Vermejo and Van Bremmer cañons; thence following the top of said divide to the head of Coal cañon, and thence along the top of the divide east of Coal cañon to a point on said divide nearest the place of beginning, thence to the place of beginning. Do you know where that tract of land is?

A. Yes, sir.

68 Q. Have you ever heard any of the people residing in that vicinity, or within the vicinity of this land, make any statement as to who owned that land?

A. Yes, sir.

Q. State whether or not people residing in that neighborhood speak of that tract of land as belonging to any one?

A. Yes, sir: I have heard them speak of it.

Q. Who was that person?

Objected to by plaintiff's counsel.
Objection sustained by the court.
Exception reserved by Mr. Jones.

Q. Was that land ever spoken of as the land of any one?
A. Yes, sir, it was spoken of as Dawson's.

Mr. SPRINGER: I object to the latter part of the witness' answer.
The COURT: That answer is stricken out, as not responsive.

Q. Of whom?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. John B. Dawson.
Q. How many people did you ever hear talk in that way?
A. Several of them; nearly the whole neighborhood there.
Q. From what period of time have you heard them talking that way, from time to time?
A. I have heard it ever since I can remember coming there.

Mr. SPRINGER: This testimony all goes in subject to our objection and exception.

WITNESS:

A. I don't know just when I heard it; but I have heard it off and on ever since 1867 or 1868.
Q. After Dawson sold these cattle to the Maxwell Land Grant Company, where were they driven to at the next round-up after they were sold?
69 A. The bulk of them was rounded up in Van Bremmer.
Q. After these cattle were sold by Dawson to the Maxwell Land Grant Company, at the next round-up they were rounded up and turned loose on the Van Bremmer, were they?
A. Yes, sir.
Q. I will ask you whether, in the valley of the Vermejo, on this land of Mr. Dawson's, the whole valley then is lined on either side with a high bluff or rock?
A. A good part of it is, on each side, surrounded by steep mountains; some of them has precipices or steep bluffs.
Q. There are two of these cañons that spread out in there?
A. Yes, sir.
Q. And level land runs back up into these cañons?
A. Yes, sir.
Q. Do you know where this dam is on the river?
A. Yes, sir.
Q. Do you know where the east end of that stone wall is?
A. Yes, sir.
Q. Could a straight line be run from that dam to that east end

of the stone wall, and keep on the north side of the river all the way?

A. No, sir, it would be impossible.

Q. How much land has Dawson got cultivated on the north side of that river?

A. I am not very much of a judge as to acres, but he has got quite a little scope of country there.

Q. How long has that been cultivated?

A. It has been in cultivation ten or twelve years.

Q. I believe you stated you were working with sheep for Dawson now.

A. Yes, sir.

Q. Are you his mayor-domo of sheep?

70 A. Yes, sir; corporal, I believe you call it.

Q. Where are these sheep kept?

A. They are kept on the east side of the grant.

Recross-examination by Mr. SPRINGER:

Q. Who have you heard talk about the boundaries of Dawson's land?

A. June Hunt, Charles Hunt—all the Hunt boys. I have heard Marion Littrell. I heard the Brackett boys. I have heard considerable Mexicans—I could not recollect all.

Q. Take June Hunt, he is the first one you mentioned, what did you ever hear him say about it?

A. I heard him say, "If that Saltpeter did not belong to Mr. Dawson, he would like to build a beef pasture over there."

Q. Did he say anything about where the boundaries of Dawson's land were?

A. No, sir, he never stated anything about it to me.

Q. Did any of these other gentlemen in the conversations speak about or discuss the boundaries?

A. I heard them say that Dawson owned quite a lot of ground in there, and spoke of the cañons he owned.

Q. Did you hear any of them speak about what his boundary was on the north, south, east or west?

A. I have heard them say that their understanding was that he owned all the drainage.

The COURT:

Q. The question is as to the boundaries.

A. I don't know as I ever heard them say anything as to the boundaries.

Q. Did anybody else outside of Dawson's family ever point out to you the boundaries of Dawson's claim?

71 A. I don't remember as they ever did point out the boundaries. I have heard them speak of his claim.

Mr. SPRINGER: I move to strike out what the witness has stated as to what people said about boundaries, on the ground that he has simply heard some general talk about a claim.

Motion overruled.

Exception reserved by Mr. Springer.

Q. This place where you are running sheep is not on this land?

A. No, sir; it is on Government land.

Testimony of Wade Brackett.

WADE BRACKETT sworn.

Direct examination by A. A. JONES:

Q. Where do you reside?

A. On the Vermejo.

Q. Do you know where John B. Dawson lives, the defendant in this case?

A. Yes, sir.

Q. How far from his house do you live?

A. I am living now about a mile, I judge, from his place.

Q. How long have you lived on the Vermejo?

A. I have lived there since 1876.

Q. What has been your business there since 1876?

A. I have been working after cattle mostly; worked some on ranches.

Q. Did you have any cattle of your own up there?

A. Yes, sir.

Q. Where was your range?

A. Why, the country we claimed as our range was along in the neighborhood of our place, in the cañon that emptied into the creek right there that was called Brackett cañon.

72 Q. How far was that from Dawson's place?

A. I guess it was in the neighborhood of eight or ten miles, or such a matter.

Q. What other cattlemen was there in that country at that time when you went there?

A. Why, there was a good many; quite a number. I can mention them all if it is necessary.

Q. Start in with the Caliente country.

A. The first man on the Caliente that was there when I went there was Coleman. He lived at the mouth of the cañon. The next man was Grandpa Dawson, Mr. Dawson's father. The next man was Zenus Curtis, and Frank Curtis, and the Hunt boys, and Wolf, and the Lee boys, Fred. and Victor.

Q. You are not related to the gentleman you call Grandpa Dawson, are you?

A. No, sir.

Q. Just an old gentleman you refer to in that way?

A. Yes, sir; we always call him "grandpa," and Mr. Dawson we call Mr. Dawson.

Q. The old gentleman is the father of this man, the defendant?

A. Yes, sir.

Q. In what way were cattle handled those days when you went there?

A. When I first went there it was customary for us all to handle our cattle as much around our home places as we could. We had no regular round-up system at that time. We all worked together. Each man got his cattle and drove over to his home range.

Q. Up to what period of time was that the custom?

A. I think we quit that way of doing, at least to considerable extent, along about 1883 or 1884. The grass got so short that we allowed them to run more or less than we had formerly done.

73 Q. But up to 1883 and 1884 each man tried to keep his cattle at home?

A. Yes, sir; that was his intention.

Q. Do you still live up there where you went in 1876?

A. No, sir.

Q. When did you move away from there?

A. I left there last January.

Q. I will read you a description of a piece of land, Mr. Brackett: "All the land in the valley of drainage of the Vermejo river, in the county of Colfax, Territory of New Mexico, within the following boundaries: Commencing at the dam on said river, at the upper end of John B. Dawson's farm, thence running to a high point of rocks on the north side of the Vermejo cañon, thence following along the top of the divide west of Rail cañon to the head of Saltpeter cañon, thence down along the top of the divide east of Saltpeter cañon to a point on a line with said John B. Dawson's rock fence, thence following the line of said rock fence across the Vermejo to the top of the divide, between the Vermejo and Van Bremmer cañons; thence following the top of said divide to the head of Coal cañon, and thence along the top of the divide east of Coal cañon to a point on said divide nearest the place of beginning, thence to the place of beginning." Do you know where that tract of land is?

A. Yes, sir.

Q. Who, if any one, resides on that tract of land?

A. Mr. Dawson.

Q. In what way, if any, has Dawson occupied that piece of land?

A. Why, he has used it for ranching purposes, I guess you would call it; and handled his stock there and animals.

Q. Have you been down on that place and around there considerably during the years you resided up there in that locality?

74 A. Yes, sir; I have been there, more or less, every year, I guess.

Q. Had there been any cattle upon this tract of land during the time you resided near it?

A. Dawson's cattle has been on there all the time, and a few strays would naturally get in on a man whether it is fenced or not fenced.

Q. Do you know what would be done with those strays when they would get on there?

A. Why, we drove them off. I have worked for Mr. Dawson, off and on, excepting the time I worked for the Maxwell Cattle Company, and we always drove the cattle outside of what was called or recognized as his boundary lines, and turned them loose.

Mr. CATRON: I ask the court to strike that answer out where he speaks, what was recognized and called his boundary lines.

Motion overruled by the court.

Exception reserved by plaintiff's counsel.

Q. What other cattlemen were there around there except those that resided in the vicinity of Caliente, you have spoken about?

A. Pat. Lyons lived on the Van Bremmer, Lacey lived below Dawson, and Marion Littrell lived down below a little further, and a number of men.

Q. Where did Lyons have cattle?

A. He had cattle on the Van Bremmer.

Q. That is over on the west of Coal cañon, is it?

A. Yes, sir.

Q. How far were his cattle or his home ranch from the head of Coal cañon?

A. I judge about from seven to nine miles.

Q. Was there anybody else that had cattle over on the Van Bremmer except Lyons?

A. The last few years Mr. McQuistion run a few cattle down by the mouth of the cañon, was all.

Q. Down at the mouth of Van Bremmer?

75 A. A number of years ago there was a party in there, named Woodburn brothers, had some cattle close to Lyons' place.

Q. Do you know how they managed their cattle with reference to this tract of land?

A. They just gathered their cattle and drove them into the Van Bremmer, and there was a cañon run off to the left of that cañon that we always called Valdez cañon.

Q. Do you know whether any of the Lyons cattle or cattle belonging to the Woodburn brothers ranged over in Coal cañon?

A. Not with their consent they didn't.

Q. Did any of them ever get in there?

A. Lyons, I think, has had a few cattle that went in there.

Q. What was done with those cattle, if anything, when they did stray in there?

A. When I worked for Lyons we gathered the cattle and drove them back to his place, and threw them above his range.

Q. Did you ever hear Lyons speak about this land here; as to whom it belonged?

Objected to by plaintiff's counsel.

Question withdrawn.

Q. Did Dawson ever speak to you about the boundary of his range?

Objected to as immaterial.

Objection sustained.

Exception reserved by Mr. Jones.

Q. Did Mr. Dawson have any cattle or stock in Coal cañon?

A. Yes, sir, he has always had them in there.

Q. Well, how would he manage his cattle with reference to the boundary lines I read to you?

A. Well, he always tried to keep them inside of that boundary line.

76 Q. If any of them got outside the line, what was done with them?

A. We turned them back on his range there on the round-ups or private hunts.

Q. Do you know who has claimed to own the tract of land described in that plea since 1876?

A. Do I know who has claimed to own it?

Q. Yes, sir.

A. I don't know of any one but Mr. Dawson.

Q. The question can be answered by yes or no. Do you know who has claimed to own it?

A. Yes, sir.

Q. State who has.

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. Mr. Dawson.

Q. This gentleman over here (pointing to defendant)?

A. Yes, sir.

Q. Have you ever heard the people, other than Dawson, residing in that vicinity, speak of this land as belonging to any one?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. Yes, sir.

Q. State the name of the person that they always spoke of it as belonging to.

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. They have always spoken of it as belonging to Mr. John Dawson.

Q. How long have you heard the people in that vicinity speak of it in that way?

Objected to by plaintiff's counsel.
77 Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. Since I have been in the country.

Q. In the handling of cattle other than Dawson's, in that neighborhood, how were they managed, with reference to this tract of land; that is, over on the north of it, the Caliente and Crow creek and in that country?

Objected to by plaintiff's counsel as immaterial.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. The cattle on the Caliente were rounded up, branded and handled there; also on Crow creek.

Q. Were the cattle of these people over on Crow creek and the Caliente permitted to go over on this tract of land?

Objected to by plaintiff's counsel as leading.
Objection overruled.
Exception reserved by plaintiff's counsel.

A. From 1876 up to the time of the formation of the Crocker outfit, they were not.

Q. Even after that, how were they managed—after 1883, how were they managed, with reference to this land claimed by the defendant?

A. Very much as before.

Q. Did anybody else except Dawson or his son have any cattle that ranged within this tract of land?

A. None permanently.

Q. State whether or not the Crocker outfit that you spoke of, so far as you know, ever said anything to Dawson about building a fence on any part of this land. Were you associated with the other parties under the name of the Crocker outfit?

A. Yes, sir.

Q. Did that company ever undertake or desire to fence a pasture up in that country?

Objected to as immaterial.
Objection sustained.

78 Q. Where did Mr. Lacey keep his cattle, in reference to the land claimed by the defendant.

A. At his Red River ranch.

Q. How far is that from this tract of land?

A. His ranch must be twenty miles from the lower line.

Q. Did Lacey have any thoroughbred cattle up there in that country at any time?

A. He and Coleman had a few thoroughbred cattle in the Caliente country.

Cross-examination by T. B. CATRON:

Q. Do you know where that dam is that Mr. Jones read to you about from that paper—on the Vermejo river?

A. Yes, sir.

Q. Do you know where the fence is that is mentioned in that paper he read to you—the stone fence?

A. Yes, sir.

Q. How far apart are they?

A. From a mile and a quarter to a mile and a half; possibly a little more.

Q. Are they both on the river?
A. Yes, sir.
Q. Which is above?
A. The dam is above.
Q. How long is the cañon called Rail cañon?
A. Rail cañon is about eight or ten miles long, I judge, at a rough guess.
Q. How long is Saltpeter cañon?
A. Between eight and twelve miles.
Q. What is the direction of Saltpeter cañon from its head to its mouth?
A. I think it runs very nearly south.
Q. What is the direction of the Vermejo river—the direction between the dam and the fence?
79 A. Southeast.
Q. Is there a stream of water in Rail cañon—permanent st-eam?
A. No, sir.
Q. How is that cañon as to being or having steep banks or being a wide valley?
A. Why, in places it is rather wide, and in other places it narrows in to some extent, and is rather high.
Q. Are there any steep banks or rocky banks to it in any place?
A. There are few places, if any, but what a person can ride over it.
Q. How high above the valley do the hills rise?
A. I could not tell you.
Q. How much higher is the top of the hills on either side than the bottom of the cañon—straight up?
A. I don't know anything about the distance. At places it is pretty high.
Q. On an average, how steep are the hills coming from the bottom of the cañons to the top of the hill? Give it in degrees or any other way you can give it.
A. I don't know anything about degrees.
Q. Any other way you can give it.
A. There is a number of bluffs; you can drive a wagon out on the top of them, and in some places it is pretty steep.
Q. Any part of that cañon cultivated?
A. I don't know that it is.
Q. Don't you know that it is not?
A. No, sir.
Q. Don't you know it was not up to the time you left there?
A. No, sir.
Q. How many times have you been in the cañon lately—up to a year and a half ago?
80 A. I could not tell you. Going to the upper country, where I have a few stock, I ride it pretty often.
Q. Ride right up the cañon often, do you?
A. Yes, sir.
Q. Did you ever see any cultivated land in it?

A. If you would allow me to explain the reason, I don't know if you would call it cultivating on the Vermejo or in the cañon.

Q. I am asking about the cañon, not the Vermejo; after the cañon leaves the Vermejo and goes up into the hills. I am not speaking of the valley of the Vermejo, where the cañon empties down into the Vermejo, at all.

A. There is no farming above where it starts up into what we call the cañon.

Q. On the north or east side of the Vermejo there is some farming, is there not?

A. Yes, sir.

Q. There is a ditch there or an acequia?

A. There is an acequia on one side; I guess you call it the west side.

Q. Is there any acequia on the north or east side of the Vermejo? You stated, as I understand it, that the Vermejo, between the two points you have mentioned, runs from northwest to southeast. Did I understand you correctly?

A. Yes, sir.

Q. Between these two points on the northeast side of the Vermejo, is there any cultivated land?

A. Yes, sir.

Q. Any acequia on that side?

A. Yes, sir. Two.

Q. West or east of both of these acequias, is there any cultivated land; east of the acequias or northeast?

A. No, sir.

81 Q. Then, in that part of this cañon called Rail cañon, which lies east or north of those acequias, there is no cultivated land at all?

A. Above these ditches?

Q. Yes, sir.

A. No, sir.

Q. Is there a running stream of water in Salpeter cañon?

A. No, sir.

Q. What kind of a cañon is that as to the condition of the hills on either side of it, as to being steep or not?

A. The head of it is a flat, open, nice cañon; below the head of the cañon it is very high, deep and narrow; that is, down in the horseshoe pasture; and then the cañon runs out on the prairie.

Q. You spoke of Coal cañon on the west side of the Vermejo river. How long is that?

A. That cañon I judge to be five or six miles long.

Q. State whether or not this Rail cañon comes into the Vermejo between the dam and stone fence which was mentioned to you.

A. Yes, sir.

Q. Where does Saltpeter cañon come into the Vermejo—between the fence and the dam, or above or below them?

A. It runs in below the stone fence.

Q. How far below?

A. About two or three miles, I judge; I don't know the distance.

Q. How far is the Saltpeter cañon from the Vermejo river, at the point where that fence crosses the river, or comes to the river going east?

A. Possibly a mile or more; I don't know. Straight across, it is not very far.

82 Q. What kind of a country lies between the Vermejo and Saltpeter cañon going due east from that point where the fence touches the river?

A. It is kind of rolling; a hill, I guess you would call it.

Q. How high is that hill above the current in the Vermejo?

A. It is about the same as this Rail cañon you have been speaking about. That is very hard to get at. It is more or less rocky.

Q. Any rocky bluffs about it?

A. No, sir, there are no bluffs.

Q. Do the layer of rocks crop out anywhere there?

A. Yes, sir.

Q. Which is farthest north, the head of Saltpeter or that dam?

A. Possibly the head of Saltpeter is a little the farthest.

Q. Is it not five or six miles farther north?

A. No, sir, it is not.

Q. You said Saltpeter cañon was about twelve miles long?

A. Between eight and twelve. I don't know how long it is. I never saw the distance measured.

Q. How far is the head of Rail cañon north of the dam?

A. Well, it is possibly a little farther north; the way these cañons lay there is not much difference in the head of them.

Q. How far does Rail cañon come into the Vermejo below the dam?

A. Something like a mile.

Q. You say it is about ten miles long?

A. I said I thought it was between seven and ten miles; possibly eight or nine miles.

Q. How far is the head of Rail cañon from the Vermejo river?

A. Seven or eight miles.

83 Q. In Coal cañon is there a permanent running stream of water?

A. No, sir.

Q. Are there any cultivated lands on Coal cañon, outside of the ditch on the west side of the Vermejo river?

A. No, sir.

Q. Has there been any cultivated lands there since you have known it?

A. No, sir.

Q. What kind of a cañon is Coal cañon?

A. About such a cañon as Rail cañon.

Q. Is it narrow or broad?

A. Along down to the mouth of it it is rather broad.

Q. How far do you get up before it gets rather narrow?

A. I never measured the distance; probably a mile or a mile and a half. It becomes quite narrow; then comes up quite a little ways

and widens out. There is several little cañons goes out from the main cañon.

Q. In 1876, when you first went to that country, the people had the country divided off into cattle ranges, didn't they?

A. Yes, sir.

Q. Each one respected the other man's range?

A. Yes, sir.

Q. Respected one man's range, just as much as you had in there, did you not?

A. Yes, sir.

Q. By common consent then the country there was divided into ranges among the people, and each man adopted a certain proportion of the country as his range, and claimed it as his range, didn't he?

A. That was the custom of the country when I went there.

84. Q. Each man claimed these particular portions of the country as his range?

A. Yes, sir.

Q. Did you have any cattle there at that time?

A. Yes, sir.

Q. And a ranch which you claimed as your own?

A. Yes, sir.

Q. Simply claimed it as your cattle ranch?

A. I had a ranch, and there was a cañon or two near by we claimed.

Q. As your range?

A. Yes, sir.

Q. At that time the people generally claimed that as public land, did they not?

A. Yes, sir, the part I lived on was.

Q. Didn't the people generally around there claim that land as public land?

A. The sales had been made round there and people thought it was Government land.

Q. And the people outside of these men who claimed under the sales claimed all of it was public land, didn't they?

A. Yes, sir.

Q. Even included that which was sold; they even claimed that as public land, didn't they, except those that had bought? Was not that generally the case?

A. I don't think I understand you right.

Q. Is it not true that the people there, outside of those people who had purchased lands, or claimed to have purchased lands, claimed that all the land around there, even including that which these men claimed to have purchased, was public land of the United States?

A. I have always been informed that there was a grant down in that country somewheres; I never knew myself.

On motion of plaintiff's counsel this answer was stricken out as not responsive.

85 Q. Didn't the people claim the land all around there, outside of these men who claimed to have purchased; all the balance of the people around there, didn't they claim all the balance of the land was public land, leaving those out who claimed to have purchased?

A. Up in that country where I lived, that was their impression.

Q. That was the general understanding amongst them?

A. Up where I lived that was my understanding.

Q. Embracing all that country around there for fifteen or twenty miles?

Mr. JONES: I object to this line of cross-examination.

Objection overruled by the court.

Exception reserved by defendant's counsel.

A. Yes, sir.

Q. You live about a mile and a half from Dawson?

A. Yes, sir, at the present time.

Q. Where did you live in 1876?

A. Up above Dawson, on the cattle ranch we have been talking about, on the Vermejo.

Q. About how far?

A. Between eight and ten miles above Dawson's.

Q. How long did you live at that place?

A. I lived there from 1876 until about the middle of this past January.

Q. You said that you had worked for Dawson some.

A. Yes, sir.

Q. When and how long did you work for Dawson?

A. I worked for him, off and on, ever since I have been in the country. I could not tell when or how long.

Q. What were you doing?

86 A. I worked generally after his cattle and horses.

Q. Where did he keep his horses?

A. His private brand he kept in the cañon.

Q. The cattle that you worked with, where did he keep them?

A. I worked with them all. He had a half a dozen brands.

Q. Give us the different places where he kept them.

A. In gathering those horseshoe cattle they were left in the horseshoe pasture.

Q. When was that?

A. That was in the first days of 1880, I judge.

Q. After 1880, was it?

A. Yes, sir. The three-X cattle and other cattle he owned were run on the Caliente country, and they would drive back his home cattle; individual brands were dropped at the place.

Q. How many cattle did he have in his individual brands?

A. That is a hard question to answer.

Q. Were these cattle that you called his "private brand," cattle that ranged right around his house, and were known as his home-ranch cattle?

A. They were the cattle he proposed to run in these cañons.

Q. How many of them was there?

A. He sold them for beef and used them at his home place; I guess at any time there would be two hundred; maybe two hundred and fifty.

Q. Sometimes less than a hundred, wasn't there?

A. Yes, sir; possibly less than a hundred.

Q. These consisted of from less than a hundred up to two hundred?

A. Yes, sir.

Q. They were principally milk cows, were they not—and their product?

87 A. No, sir, they were not milk cows.

Q. Wasn't any of them milk cows?

A. Yes, sir.

Q. How many were milk cows?

A. I have seen Mexicans milk from a half dozen cows up, probably to as high as forty.

Q. These cattle, along with the others you have mentioned, not exceeding two hundred, ranged in the various cañons you have mentioned?

A. Yes, sir.

Q. Were these cattle kept under herd—these particular cattle I have mentioned?

A. Yes, sir, formerly he kept them under herd. He does not now.

Q. How long since he kept them under herd?

A. I don't know. I don't remember.

Q. Did you ever herd them?

A. No, sir.

Q. Who did you ever see herd them?

A. He used to have Mexicans around there herding them.

Q. Give the names of them, if you know.

A. I don't know that I remember the names. I was out with the round-up wagons, and knew but little about the fellows at the ranch.

Q. You paid but very little attention to this small bunch of cattle?

A. When they were round home I did not pay any attention to them.

Q. When they were herded, were they herded around the house or near the house?

A. Probably they might go five or six miles up these cañons; and they might go all the way up, so far as I know.

Mr. CATRON: I ask that the latter part of the answer be stricken out.

The COURT: The answer is stricken out.

88 Q. You paid no particular attention to these cattle unless you saw some of them loose or scattered away from there, did you?

A. No, sir.

Q. How many cattle did you range in the Brackett cañon?
A. We ranged anywhere from 75 to 150.
Q. Did they get out of the cañon and scatter?
A. Yes, sir.
Q. Did you keep them under herd?
A. No, sir.
Q. When were they gathered together, with reference to keeping them together, at any particular time of year?
A. I always gathered any that I found had strayed away from home during the entire summer round-ups.
Q. That was the custom of all the people around there up to 1883, was it not?
A. Yes, sir.
Q. There was no difference between the way people handled their cattle up there, was there?
A. Very little, if any.

Redirect examination by A. A. JONES:

Q. What other stock did Dawson have in or on that tract of land except his cattle?
A. Horses and hogs.
Q. About how many horses did he have in there?
A. He had anywhere from 50 to 150.
Q. How many hogs did he have in there?
A. From one hundred to three or four hundred, possibly.
Q. What did the hogs feed upon?
A. Acorns, piñons, grass—anything they can get.
89 Q. Is there any acorn mast on that piece of land?
A. Yes, sir.
Q. What kind of mast is it?
A. Piñons and acorns.
Q. To what extent is that on that land?
A. That "mast" extends pretty well over the whole part of it where there is any timber.
Q. Where did he keep his horses and hogs?
A. A few were kept in Coal cañon, some in Rail, others in Saltpeter.
Q. Did Dawson ever claim that land was public land?

Objected to on the ground that the same is not redirect examination.
Objection overruled.
Exception reserved by plaintiff's counsel.

A. No, sir, I never heard him make any such remark.
Q. You spoke of two acequias on the east side of the river; does Dawson water his land from those acequias?
A. I think he waters his land from Dane's acequia. The other is the company's ditch. It is not in shape to water anything with.
Q. Is Dane's acequia one of those two acequias you have mentioned?

A. Yes, sir.

Q. What two ditches are these on the east side of the river?

A. The first one is the Maxwell Land Grant Company's, and the other is Dane's, or the Horseshoe Company's, I believe it was called.

Q. Has not Dawson some cultivated land on the east side of the river, above the head of the Dane acequia?

A. Yes, sir.

Q. That is not irrigated, is it?

A. No, sir.

90 Recross-examination by Mr. T. B. CATRON:

Q. Is that land above Dane's acequia in the bottom of the Vermejo?

A. Yes, sir.

Q. Is it between either one of these acequias and the Vermejo river?

A. No, sir.

Q. Which side of the acequia is it on?

A. It is not on either side of the acequias. Is is clear above either one of the acequias.

Q. Is it above that dam?

A. No, sir.

Q. How far below the dam?

A. Commences right at the dam, or close to it.

Q. Is there any acequia taken out on the east side of that dam?

A. No, sir.

Q. How much land is there there that is not irrigated, that is cultivated?

A. I don't know; ten or twenty acres, possibly.

Q. That is right along the edge of the Vermejo river, is it; on the east side?

A. It lies between the Vermejo and the foot-hills.

Q. In the bottom?

A. You could not call it all bottom.

Q. Well, low lands?

A. Some of it is on the low land and some of it is what we call mesa land.

Q. How long has that land been cultivated?

A. I don't remember, sir.

Testimony of Cornelius Daley.

CORNELIUS DALEY sworn.

Direct examination by A. A. JONES:

91 Q. What is your name?

A. Cornelius Daley.

Q. Where do you reside?

A. Cimarron.

Q. Where did you reside in 1868?

A. I resided at Fort Lyon, in Colorado.
Q. Where did you liv*ing* prior to 1868?
A. In New Mexico.
Q. In what part?
A. On the Rio Grande, I think, in Albuquerque.
Q. When did you first move up to the Vermejo?
A. In, I think, the year 1870.
Q. Do you know John B. Dawson, the defendant in this case?
A. Yes, sir.
Q. How long have you known him?
A. I think about twenty-two or twenty-three years.
Q. Where did he live when you first knew him?
A. On the Vermejo.
Q. Do you know where his place is on the Vermejo?
A. Yes, sir.
Q. Did you live on the Vermejo?
A. Yes, sir.
Q. For how long?
A. Something about a year or a year and a half.
Q. What were you doing there at that time?
A. I was doing some mason-work.
Q. For whom?
A. For John B. Dawson.
Q. What work did you do for Mr. Dawson?
A. I built a stone fence for him.
Q. Where is that stone fence with reference to Dawson's house?
A. I think it is on the southern line of his land.

92 Q. I will read you a description of a piece of land: "All the land in the valley or drainage of the Vermejo river, in the county of Colfax, Territory of New Mexico, within the following boundaries: Commencing at the dam on said river, at the upper end of John B. Dawson's farm, thence running to a high point of rocks on the north side of the Vermejo cañon, thence following along the top of the divide west of Rail cañon to the head of Saltpeter cañon, thence down along the top of the divide east of Saltpeter cañon to a point on a line with said John B. Dawson's rock fence, thence following the line of said rock fence across the Vermejo to the top of the divide, between the Vermejo and Ván Bremmer cañons; thence following the top of said divide to the head of Coal cañon, and thence along the top of the divide east of Coal cañon to a point on said divide nearest the place of beginning, thence to the place of beginning." Do you know where that tract of land is?
A. Yes, sir.
Q. Where is that stone wall you built with reference to that tract of land?
A. It is between Dawson's land and the Lacey land.
Q. Which side of Dawson's place or land is that rock fence?
A. It is on the south side.
Q. And that stone fence you built is the fence referred to in that pleading?

A. Yes, sir.
Q. When was that stone fence built?
A. I think it was in 1870 or 1871. I would not be positive about the dates.
Q. When did you commence building on it?
A. I think it was in 1870.
Q. Do you know anything about the dividing lines of these lands along the river there?

Mr. CATRON to witness: Of your own knowledge.

93 A. Yes, sir, according to what Dawson told me and showed me when I went to build the fence; he showed me the point to build it to.

Mr. CATRON: We object to his stating any more about that.

Q. Did anybody else except Dawson talk about Dawson's south line?
A. Yes, sir.
Q. Who did you hear talking about Dawson's south line except himself?
A. I heard it at Cimarron before I went to build the fence.
Q. How far is Cimarron from Dawson's ranch?
A. I judge it is twelve miles to the stage station, and it is a little further up to Dawson's place.
Q. There was a stage station on the Vermejo?
A. Yes, sir.
Q. How far from Dawson's place?
A. I judge it is between five and six miles; that is what it was called.
Q. What direction from the stage station is Dawson's place?
A. West or northwest.
Q. And Cimarron is southwest from Dawson's place?
A. Yes, sir.
Q. While you were up on the Vermejo for that year or two, did you have any conversation with the people residing in that neighborhood as to who owned this tract of land that I read you a description of?
A. Yes, sir.
Q. Was that the tract of land spoken of as belonging to any one?
A. Yes, sir.
Q. As belonging to whom?

Objected to by plaintiff's counsel.
Objection overruled by the court.
94 Exception reserved by Mr. Catron, of plaintiff's counsel.

The COURT to witness: You understand the question, do you: Did you ever hear the people speak about who owned the land included within the boundaries you have just recognized as being acquainted with?
A. Yes, sir.

Mr. JONES to witness:

Q. They were spoken of as whose lands?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. As Mr. Dawson's; and also of Miller and Maulding, and Curtis.

Q. You heard them speak of Miller, and Maulding's lands, too?

A. Yes, sir.

Q. Where were they, with reference to this tract of land I read you a description of?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. They were further down the creek.

Q. Did you ever hear people there speak of Dawson's south boundary line, as to what it was?

A. Yes, sir.

Q. What was it, according to their statements?

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved by plaintiff's counsel.

A. They said it was above Lacey's ranch, adjoining Dawson's land. At that time it belonged to De Graftenreid.

Q. You mean the land just on the south of Dawson belonged to De Graftenreid?

A. Yes, sir.

95 Q. During the time you were there, did you hear the people residing in that vicinity talk about Dawson's south boundary line?

A. Yes, sir.

Q. What did they speak of as his south boundary line?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. They said he was going to fence in his portion of the land from this stone fence—when it was found he was going to continue the stone fence to the high point—to the divide.

Q. During the time that you lived there, did Dawson occupy this piece of land described in there in any way?

A. Yes, sir.

Q. In what way?

A. He farmed some of it, and had cattle and horses and hogs on the rest of it.

Q. Were you around over any part of this land quite frequently during the time you were there?

A. Yes, sir.

Q. Well, did anybody else have any cattle or stock in there during that time?

A. No, sir.

Q. Where did you get the rock from with which to build that fence?

Objected to by plaintiff's counsel as immaterial.

Objection overruled by the court.

Exception reserved by plaintiff's counsel.

A. I got them up the cañon and on top of some of the hills—drove the wagon up there wherever I found rock.

Q. How long is that fence, Mr. Daley?

A. If I recollect right, it is about one thousand yards long.

Q. How high is it?

96 A. Five feet high.

Q. How thick is it in width?

A. It was two feet on the bottom and battering to one foot on top.

Q. How long were you in building that fence?

A. Something over a year, I think. I did not work at it all the time. I had to haul the rock.

Q. I mean in getting the rock and building the fence—the whole thing.

A. One year.

Q. Did you do any other work there for Mr. Dawson?

A. Yes, sir.

Q. What other work did you do?

A. Plastering, and I built his house afterwards.

Cross-examination by T. B. CATRON:

Q. You did nothing else except build that fence and plaster his house?

A. Yes, sir.

Q. What else did you do?

A. I did some work on his old building; repaired it; built chimneys in it.

Q. Anything else?

A. I don't recollect anything more; I might have done some more work.

Q. Outside of the things you have mentioned, you did not work as a hand or an employé on the range?

A. I think I have helped some there.

Q. What at?

A. Well, I believe I worked a few days there plowing, if I am not mistaken; I was not a very good hand at the plow.

Q. That was in the river bottom of the Vermejo river?

A. Yes, sir, and it was for Mr. Chase—not exactly for Mr.

97 Dawson, but it was on his land, though.

Q. Where did this fence commence, with reference to the river?

A. It crossed the river. I crossed the river with it.

Q. How far does it extend east of the river?
A. It is north, I would call it.
Q. The fence runs north and south, does it?
A. I believe so.
Q. How far on the north side of the river does it run?
A. The most part of the fence is on the north side.
Q. Will you kindly tell me how much of it is there?
A. There is over nine hundred yards.
Q. Nine hundred yards or feet?
A. Yards, I think, because I measured it.
Q. Nine hundred yards of it on the north side?
A. Yes, sir.
Q. Is all that in the valley, or any of it up on the hill?
A. There is some up on the hill.
Q. How far up towards the top of the hill does it extend; how close to the top of the hill, I mean?
A. I could not exactly tell you.
Q. Was it pretty close to it?
A. It runs into the hill, a portion of it.
Q. I am asking you how far from the top of the hill it is.
A. Do you mean the divide?
Q. I mean the first divide east of that river.
A. It is quite a ways from the divide.
Q. That divide is between what two cañons?
A. The line runs towards Saltpeter cañon.
Q. Well, there is a divide between Saltpeter cañon and the Vermejo river, is there not?
98 A. There is small hills there.
Q. Well, they divide the two, don't they?
A. I would not say so. The divide is what divides the water in the center; that is the highest point.
Q. Isn't there a hill there which divides the water which runs into Vermejo creek from the water which runs into Saltpeter cañon?
A. I guess there is.
Q. And these same hills extend up and divide Rail cañon from Saltpeter cañon, don't they?
A. I don't know.
Q. Have you ever been up there to see?
A. Yes, sir.
Q. How far up Rail cañon have you ever been?
A. I have been up, I expect, a mile or two.
Q. Were you ever on Saltpeter cañon?
A. Yes, sir.
Q. How far were you ever up that from the mouth of it?
A. I was up, I think, to the divide.
Q. I want to know how far you were up—to the commencement of Saltpeter cañon, do you mean?
A. I traveled that way going out to Crow creek.
Q. When did you do that?
A. The years I have spoken about.
Q. The years you were working for Dawson?

A. Yes, sir.

Q. You went up about a mile or so in Rail cañon, then you crossed over into the other cañon?

A. I went up there looking after sand; to see if I could get better sand than in the creek.

Q. And all the traveling around you did when you were there was looking for sand and stone, was it?

A. No, sir; I had leisure hours I used to go around and hunt sometimes.

Q. Would you go alone or with anybody?

99 A. Sometimes alone.

Q. Where did you do your hunting?

A. In those hills there.

Q. What were you hunting?

A. Anything I could see or kill.

Q. How far would you go out when you were hunting?

A. I would go a mile or two. I would not go very far afoot.

Q. Who did you ever hear speak about those lands belonging to Dawson?

A. I heard men at Cimarron speak about it before I went there.

Q. Who did you hear speak about it?

A. I heard the county clerk of Colfax county. He was the one informed me the work was to be done. John Lee was his name.

Q. Did he live in Cimarron then?

A. Yes, sir.

Q. And you know Cimarron is fifteen miles from there?

A. Yes, sir.

Q. I asked you who in the vicinity of these lands spoke of them as being Dawson's. In that vicinity, on the Vermejo, in that particular neighborhood, who did you hear speak about this land belonging to John B. Dawson?

A. Mr. De Graftenreid, Mr. Curtis, Mr. Miller.

Q. Which Curtis?

A. Joel. I done some work for some of them.

Q. Now, will you give me the name of every man who lived in that vicinity, along up and down in the settlements on the Vermejo river. Give me the name of every man that lived there that you know.

A. There were several; perhaps I can't give them all.

Q. Give all you can think of.

100 A. Mr. Chase, Ed. McBride, Mr. Dawson and his men, Mr. De Graftenreid and his men and family, Mr. Curtis——

Q. Joel Curtis?

A. Yes, sir; and Mr. Dawson's family.

Q. You have mentioned him before.

A. There is more than one Mr. Dawson. A Mr. Wardnell and family, Mr. Miller, and Abe Sever, and some other men; I can't think of their names.

Q. How many different people—that is, heads of families or individuals—lived up and down the Vermejo river there in that settlement?

A. Just what I stated.

Q. You stated there were some others; how many more?

A. Some other people; I did not say families.

Q. I didn't ask you whether they had families or not.

A. I lived there myself.

Q. I asked you how many more people lived there; whether you can remember them or not.

A. I don't know as I recollect any more.

Q. Did Lacey live there?

A. Yes, sir.

Q. You have stated that De Graftenreid told you something about the land; now, just tell me exactly what De Graftenreid told you about that land. Give exactly, or as near as you can, all he said about that being Dawson's land.

A. He told me that Dawson, him and Joe Curtis and Dick Miller had bought six miles of the Vermejo.

Q. I am asking you what he said about that land being Dawson's land. I don't want to know about somebody else's land—but go ahead and tell it your own way.

A. He told me that Dawson had bought the upper part, with the drainage of the land, and that he was adjoining him himself—that his land was adjoining Dawson's. I done some work for De Graftenreid a short time before I done some work for Dawson, and that is how I got acquainted with him first.

101

Q. De Graftenreid told you this before you did the work for Dawson, then?

A. Yes, sir.

Q. Before you built that fence?

A. Yes, sir.

Q. What year was that that De Graftenreid told you that?

A. I think it was the latter part of 1869.

Q. Do you remember what Dick Miller told you—exactly what he told you?

A. I don't remember every word he said; but he said he bought the lower part. I did work for Miller, also.

Q. When was that—before or after you built the fence for Dawson?

A. It was after or during the time I was building it; I am not certain.

Q. When was it you had your conversation with Curtis?

A. At the time I done some work for him, also.

Q. Was that before or after you built the fence for Dawson?

A. Before.

Q. It was before you built the fence for Dawson, Curtis made these statements to you?

A. Yes, sir.

Q. How long before?

A. Five or six months, maybe. I am not very positive about that; it might be a month, more or less.

Q. How many cattle did you see Dawson have ranging on that land at the time you were there?

A. Well, I did not count them. I could not say how many there were; but I saw a good many cattle there.

102 Q. They were cattle that were kept right at the home ranch, and pastured out from the house?

A. Yes, sir.

Q. Did they exceed fifty?

A. Yes, sir, I judge they did.

Q. Do you think they exceeded 100?

A. I think so.

Q. Would they exceed 150?

A. As I said, I did not count them. According to my judgment, looking at a bunch of cattle here and a bunch there, I judged there was perhaps two or three hundred head there.

Q. They were ranging round there at the water of the Vermejo?

A. No, sir; they were up the cañons and over the hills.

Q. Just running at large?

A. No, sir; they were herded.

Q. Close-herded?

A. Yes, sir.

Q. Close-herded, you say?

A. I don't know what you mean by close-herding. There was a man looking after them.

Q. How close were they kept together?

A. I am not much of a cattleman. I cannot tell.

Q. You can certainly say how close you saw these cattle kept together.

A. They were kept in the cañons, and a man would have to be up on the hill looking after them, to see that they would not get on the crops in the bottom.

Q. He was keeping them off the crops, was he?

A. I don't know all he was there for. He was with the cattle; I judged he was herding the cattle.

Q. But that was so they would not go near the crops, you say?

A. I expect so—so far as I know.

Q. Did you see him rounding them up?

103 A. No, sir; except the milk cows.

Q. How many milk cows was there?

A. I did not count them. I judge there was eight or ten or fifteen—maybe twenty-five.

Q. What cañon did you see these cattle in?

A. In all those cañons.

Q. Who drove the milch cows up; the same man who was herding them?

A. Yes, sir.

Q. When he drove the milch cows in he left the other cattle out loose?

A. I don't know what he done with them.

Q. Did he drive the other cattle in with the milch cows?

A. I believe not.

Q. Then he must have left them out there, didn't he?

A. Yes, sir.

Q. You saw but one man with them, did you?
A. Yes, sir.
Q. Were the hogs herded?
A. They were kept away from the farming land.
Q. Where was this farming land; was it in any of the cañons?
A. I believe not.
Q. Don't you know?
A. Yes, sir, I do.
Q. Well, state then.
A. It was along the creek.
Q. You mean the Vermejo?
A. Yes, sir.
Q. How wide is the farming land on each side of the river between that dam and that wall that you built?
A. Do you mean all the land in the bottom, or the land that was under cultivation?
104 Q. The land that was in the bottom that could be irrigated.
A. I never measured the land and could not tell you.
Q. More or less?
A. I might make a guess at it.
Q. Give us your best judgment.
A. Maybe one hundred yards; maybe one hundred and fifty or two hundred yards.
Q. On each side of the river?
A. Yes, sir.
Q. On which side of the river is the most farming land?
A. I could not tell you at the present time.
Q. Between that fence and the dam which was mentioned to you there, when Mr. Jones read you that description, what was the widest place from the river out to the extent of the farming land?
A. I could not tell you that.
Q. Would it exceed three hundred yards?
A. I would not say.
Q. Would it reach four hundred yards?
A. I never measured it.
Q. You built the stone fence across that bottom; you ought to know something about it.
A. You are speaking of a different part; that is not where I built the fence.
Q. But you have stated that you frequently passed over that land.
A. Yes, sir.
Q. Now, you could form some judgment about the width of that bottom land or the land which was cultivatable. Would it be a half a mile wide?
A. Maybe it was.
Q. Was it a mile wide?
A. I don't think it was.
105 Q. Don't you know it was less than a half a mile?
A. I would not say.

Testimony of Manuel Najara.

MANUEL NAJARA sworn.

Direct examination by A. A. JONES:

Q. Where do you reside?
A. At El Ponil.
Q. Do you know John B. Dawson, the defendant in this case?
A. Yes, sir.
Q. How long have you known him?
A. For twenty-five years.
Q. Where does he reside?
A. On the river called the Vermejo.
Q. I will read you a description of a piece of land: "All the land in the valley or drainage of the Vermejo river, in the county of Colfax, Territory of New Mexico, within the following boundaries: Commencing at the dam on said river, at the upper end of John B. Dawson's farm, thence running to a high point of rocks on the north side of the Vermejo cañon, thence following along the top of the divide west of Rail cañon to the head of Saltpeter cañon, thence down along the top of the divide east of Saltpeter cañon to a point on a line with said John B. Dawson's rock fence, thence following the line of said rock fence across the Vermejo to the top of the divide, between the Vermejo and Van Bremmer cañons; thence following the top of said divide to the head of Coal cañon, and thence along the top of the divide east of Coal cañon to a point on said divide nearest the place of beginning, thence to the place of beginning." Do you know where that tract of land is?
A. Yes, sir.
Q. Who resides upon that land?
106 A. Mr. Dawson.
Q. Did you ever work for Dawson?
A. By the day; yes, sir.
Q. How long did you work for him?
A. For one, two or three years; working by the day.
Q. During what years were those?
A. In 1868 I commenced.
Q. How long had Dawson been there when you commenced working for him?
A. I don't know for how long, sir.
Q. In what way, if any, did Dawson occupy that tract of land which I just read to you a description of?
A. With animals and stock.
Q. What kind of animals?
A. Horses.
Q. On what part of that tract of land were these horses and cattle grazed?
A. In the cañons, from one side to the other.
Q. Did anybody else's cattle stay in those cañons except Dawson's?

A. No, sir; I knew of no others.
Q. How long has Dawson resided upon that land?
A. I have known him for twenty-five years.
Q. Has he been living there upon that land during that time?
A. Yes, sir.
Q. Are you well acquainted in the neighborhood up there?
A. Yes, sir.
Q. Have you ever heard the people in that neighborhood, other than Dawson, speak of any one as being the owner of this tract of land?
A. Yes, sir.
Q. Of whom did they speak as the owner of the land?

Objected to by plaintiff's counsel.

107 Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. As Mr. Dawson's.

Cross-examination by Mr. T. B. CATRON:

Q. What language do you speak?
A. Spanish.
Q. Do you speak any other language?
A. No, sir; I cannot.
Q. Do you understand any other language?
A. No, sir.
Q. You have always been a resident of the Ponil, have you not?
A. Yes, sir; during twenty-five years.
Q. You just worked for Dawson by the day from time to time, as he employed you?
A. Yes, sir.
Q. You never worked for him continuously for any length of time?
A. No, sir; not for any length of time.
Q. At no time?
A. No, sir.
Q. What is the greatest length of time that you worked for him at any one time?
A. Sometimes three days, four days, sometimes for a week.
Q. What were you doing?
A. Looking out for the animals in the cañons.
Q. What did you do with the animals; keep them off the crops?
A. Gather them and look after them.
Q. How many cattle had you there?
A. Might have had 100, 200 or 300. I don't know how many.
Q. They just ranged round there wherever you could find good grass, did they?
108 A. Yes, sir, in the cañons.
Q. And they went up on the mesas, too, didn't they?
A. Every now and then they would go up on the mesas—when-

ever they could climb up. They would sometimes come down to the river for water from the cañons.

Q. What did you take care of—cattle, horses or hogs?

A. At times I looked after the cattle, and of late years after the hogs.

Q. You simply kept the hogs off the crops, didn't you?

A. Yes, sir.

Q. You rather looked after the crops than the animals, didn't you?

A. Every now and then.

Q. Did you milk the cows?

A. No, sir.

Q. There was other men for that work?

A. Yes, sir.

Q. Did you drive the cows home at night?

A. Sometimes I did, when I was working there.

Q. Where did you stay at nights?

A. In a room that Mr. Dawson had for us.

Q. You did not sleep out in the cañons?

A. Sometimes we used to, when night would overtake us.

Q. But you didn't generally sleep in the cañons?

A. No, sir; only at times.

Q. At night you would leave the cattle out by themselves, would you?

A. Yes, sir, in the cañons.

Q. They would go wherever they wanted to, after you would leave them, would they not?

A. Yes, the animals generally scattered around over the cañons.

109 Q. How many people did you know at that time living there on the Vermejo?

A. Very few, at that time.

Q. Was there a good many there who you did not know?

A. At that time there was not many persons living there.

Q. Give me the names of all the people living there that you remember.

A. With the one I worked the most was a man named "Bill."

Q. What was he—an American or a Mexican?

A. He told me he was an American.

Q. Could he speak Spanish?

A. Very little.

Q. Who else did you know up there?

A. He was the one that controlled me around there.

Q. Can you mention anybody else that was up there in that cañon at the time you worked up there, besides him and Dawson?

A. I don't know any others.

Q. You actually knew nobody else in that cañon or vicinity except Dawson and Bill?

A. I did not make the acquaintance of anybody else except these two.

Q. Didn't you know Mr. Lacey?

A. He was on the lower end.
Q. Didn't you know De Graftenreid?
A. No, sir.
Q. Didn't you know Joe Curtis?
A. No, sir.
Q. Didn't you know Dick Miller?
A. No, sir.
Q. Didn't you know Taylor Maulding?
A. No, sir.
110 Q. You absolutely did not know anybody but these two men you have mentioned?
A. Those are the only two gentlemen I worked for.
Q. You never had any talk with Bill about this ranch of Dawson's, did you?
A. Yes, sir.
Q. What language did he talk to you?
A. Spanish.
Q. Then you had very little talk with him, didn't you?
A. Yes, sir.
Q. Can you tell us what he told you about Dawson's ranch?
A. Yes, sir.
Q. What did he tell you?
A. That that ranch was Dawson's ranch.
Q. Did he tell you anything more than that?
A. Nothing more, except he told me it was Dawson's.
Q. What ranch did he refer to—the one where Dawson was living?
A. Yes, sir; that it was the property of Dawson.
Q. He didn't mention any boundaries or localities, did he?
A. He told me that it covered the heads of the cañons.
Q. Give the words in English that he used.
A. I can't express them in English, because I don't know the English.
Q. Do you mean to say that he told you that in Spanish?
A. He told me the cañons were the property of Mr. Dawson.
Q. Is that all he told you?
A. Yes, sir.
Q. Did he tell you which cañons?
A. No, sir; at that time they had no names.
111 Q. Did he mention Saltpeter cañon?
A. No, sir; he did not mention the name of the cañon at all.
Q. Where was he when he had this conversation with you?
A. Right there on Dawson's ranch.
Q. Who told you to state this?
A. No one.
Q. Have you ever told anybody before you were sworn and put on the stand, what you were going to state?
A. No, sir.
Q. Have you ever told anybody what you knew?
A. No, sir.

Q. Have you ever told anybody that any one told you that that was Dawson's ranch; told anybody that before you were sworn here?
A. No, sir; no one else.
Q. You are sure of that, are you?
A. Yes, sir.
Q. How many horses were there there?
A. There was about fifty or sixty head.
Q. How many hogs?
A. About sixty or one hundred, or more.
Q. These hogs run loose?
A. Out in the cañons, yes.
Q. Horses run loose?
A. Yes, sir.
Q. How far did they go from the river?
A. Sometimes they would go as far as the head of the cañon.
Q. Sometimes go up on the mesa?
A. Some of them.
Q. Sometimes they would get off into other cañons, too, wouldn't they?
A. Yes, sir.
112 Q. Sometimes they would get away and you would not get them back, wouldn't they?
A. No, sir.
Q. You never lost any?
A. A good many of them got lost.

Testimony of Juan Ocano.

JUAN OCANO sworn.

Direct examination by A. A. JONES, Esq.:

Q. What is your name?
A. Juan Ocano.
Q. Do you know John B. Dawson, the defendant in this case?
A. Yes, sir.
Q. How long have you known him?
A. Twelve years; since 1880.
Q. Where have you known him?
A. At his ranch.
Q. Where have you lived since 1880?
A. In Colfax county.
Q. What part of Colfax county?
A. I lived on Dawson's ranch from 1880 up to 1882. In 1882 I left there and came down to Springer, and in the month of May, 1886, I was up at Dawson's house, working for him, and I worked there up until 1887.
Q. I will read you a description of a piece of land: "All the land in the valley or drainage of the Vermejo river, in the county of Colfax, Territory of New Mexico, within the following boundaries: Commencing at the dam on said river, at the upper end of John B. Dawson's farm, thence running to a high point of rocks on the

north side of the Vermejo cañon, thence following along the top of the divide west of Rail cañon to the head of Saltpeter cañon, thence down along the top of the divide east of Saltpeter cañon to a
113 point on a line with said John B. Dawson's rock fence, thence following the line of said rock fence across the Vermejo to the top of the divide, between the Vermejo and Van Bremmer cañons; thence following the top of said divide to the head of Coal cañon, and thence along the top of the divide east of Coal cañon to a point on said divide nearest the place of beginning, thence to the place of beginning." Do you know where that tract of land is?

A. Yes, sir.

Q. Who resides upon that land?

A. John B. Dawson.

Q. Has he resided there ever since you have known him?

A. Yes, sir.

Q. How much of that land has Dawson been occupying?

A. I believe he has been occupying the entire tract.

Q. In what way?

A. He has been occupying it, as I understand it, with cattle and with horses and with hogs, and also farming it, and with trees. That is what I have seen on the place.

Q. During the time that you worked for Mr. Dawson were you frequently around in those cañons and this tract of land I read you a description of?

Objected to as leading.

Question withdrawn.

Q. State whether or not during the time you worked for Mr. Dawson you were over this property any.

A. Yes, sir; several times.

Q. Did you see Dawson's stock over on this place when you were riding over it?

A. Yes, sir.

Q. State whether or not the stock of other people was on this property during that time.

114 A. I never saw any animals belonging to other persons except his own.

Q. Did you get acquainted with the neighbors there, or the people residing in that vicinity?

A. No, sir.

Q. What kind of work were you doing for Mr. Dawson?

A. I worked for him at different things; working around the house there on the farm; also in the house; milking the cows, and I also worked with the milk cows, and bringing them into the corral in the evenings.

Q. State anything else that you did.

A. I worked for Mr. Dawson planting trees in the planting season; also going out in the cañons for horses, and also working on the farm, irrigating and plowing during the plowing season; and I also went after cattle in Saltpeter cañon whenever they sent me after

them. That is the kind of work I occupied myself with when I worked for him.

Q. Was there any fences in these cañons?

A. There is a fence at the head of Saltpeter and Rail cañons.

Q. Any fences down below those cañons?

A. In the Vermejo cañon below is a stone fence.

Q. Are there any fences in Coal cañon?

A. Yes, sir.

Q. Any in Rail cañon?

A. At the head of Rail cañon there are fences.

Q. Do you know who built those fences?

A. Yes, sir.

Q. Who was it?

A. Mr. Dawson.

Q. Did you assist in it in any way?

A. Yes, sir; at other times in going up there to repair them.

Q. Where do you say you went after you quit Dawson's employ the first time?

115 A. To Springer, the first time; in 1882 I came down to Springer. In 1886 I went back to work again for Dawson, in the month of May, and I worked for him up to 1887, in the month of June.

Cross-examination by T. B. CATRON:

Q. What is your age?

A. Forty-four years.

Q. Do you speak English?

A. No, sir.

Q. What particular work did you do in the year 1880, at Dawson's ranch?

A. In 1880 I went to Dawson's ranch, and I worked for him, as I stated before, in planting trees, milking cows, going after horses, also working on the farm, planting trees—working with the trees during the summer season.

Q. What did you do in the year 1881?

A. The same work.

Q. In 1882, what did you do there?

A. The same work.

Q. What did you do in the year 1886?

A. The same kind of work.

Q. And in 1887?

A. The same.

Q. State the particular place at which Dawson resides on that land.

A. I don't know the particular part where the place stands at. I know it is three miles above where the old coach station was. It is on the same Vermejo cañon.

Q. Do you know the dam that is mentioned there?

A. Yes, sir.

Q. How far does he reside from that dam?

A. He lived below the dam; but I don't know the distance.

116 Q. Do you know the stone fence that is mentioned?

A. Yes, sir.

Q. Does he live above or below that?

A. He lives above it.

Q. He lives between the dam and fence, then, does he?

A. Yes, sir.

Q. On which side of the river is it?

A. On the west side.

Q. How far from the edge of the river?

A. About 200 yards.

Q. Is it in the valley of the river?

A. Yes, sir.

Q. How wide is the valley of the Vermejo right there at Dawson's home?

A. I never measured it.

Q. Give us your best judgment.

A. I could not tell you how wide it is.

Q. How far is it from the edge of the river on the west side—how wide is the valley? Give us your best judgment, whether you have measured it or not.

A. I cannot, sir.

Q. Do you pretend to say you cannot give any estimate or judgment as to the distance at all?

A. I cannot, for the reason that I have not measured any distance at any place.

Q. How are you able to state the distance from Dawson's house to the river?

A. Because I know what a yard is, and I can tell what 200 yards is, more or less.

Q. Now, tell me the distance that the valley extends west of Dawson's house, in yards.

A. I could not tell you how much.

Q. Why can't you tell that as well as the one towards the river?

117 A. Because it is longer. There is a great deal of difference between the house and the river and the distance back of the house.

Q. Is there more of a valley between the house and the river than there is of the valley in the west side of the house?

A. There is more land to the right than there is between the house and the river.

Q. I didn't ask you that. I want to know whether there is more of the valley on the west side of Dawson's house than there is on the east side between the house and the river.

A. There is more to the east side than to the west side of the house.

Q. The house is situated close to the bluffs or foot-hills, is it not?

A. Yes, sir.

Q. And the valley extends from the river to the foot-hills, does it not?

A. Yes, sir.

Q. There is nothing between the house and foot-hills except a road, is there?

A. Yes, sir.

Q. Now, can you give me the number of yards from the house to the foot-hills?

A. In portions, about fifty yards; others, sixty yards, more or less.

Q. You say you sometimes went out to bring in the horses; what did you go out to bring in the horses for?

A. To work about the house.

Q. Where were the horses; out on the range?

A. Yes, sir.

Q. How many horses were there there?

A. At times there were thirty; at times, one hundred; not only work horses, but horses of Dawson.

A. They were ranging loose around over the whole range there, were they?

118 A. Yes, sir.

Q. You say you sometimes went out to get the cows?

A. Yes, sir; milch cows.

Q. How far would you go out to get them?

A. Sometimes as far as the head of Rail cañon.

Q. How far was that from the house?

A. About seven or eight miles.

Q. Did the milch cows range that far from the house?

A. Sometimes they would get that far, because in the evenings I would not be able to find them, and the next afternoon I would go after them and find them that far from the house.

Q. They went wherever they pleased?

A. Yes, sir.

Q. How many of these were there?

A. Sometimes he had thirty; sometimes thirty-five.

Q. They just ranged around all over that property, didn't they, wherever they wished to go?

A. They did not go to every place, but they went up to Rail cañon.

Q. Always go up Rail cañon?

A. Or Coal cañon.

Q. Sometimes they went out of the cañon, too, didn't they?

A. Sometimes they would go out alone, and I would have to go after them and bring them back to the house.

Q. Where did the hogs range?

A. In Saltpeter.

Q. All together in Saltpeter?

A. Yes, sir; they were at that place.

Q. Where did they range outside of Saltpeter?

A. I believe at that place only, because every time I went to look after them they were there.

119 Q. How close to the river did they range?

A. I never saw them near the river.

Q. Is there a running stream in Saltpeter cañon?
A. Yes, sir.
Q. You mean there is a permanent stream of water there?
A. I believe not, but there are springs there and they have water in them.
Q. Don't you know it is only when it rains or the snow melts off?
A. It does run when it is raining and the snow melts.
Q. After the snow is gone and in the dry seasons there is no water running in it; is not that so?
A. There is some springs of water in it.
Q. Did I ask you anything about some springs of water?
A. No, sir.
Q. Did his hogs run loose in the cañon there?
A. Yes, sir.
Q. Went wherever they pleased, did they?
A. Yes, sir.
Q. How close did they range to the river—to the Vermejo river?
A. About four or five miles.
Q. Didn't they come down here to the cultivated grounds; not on them, but near to them?
A. No, sir.
Q. Did you take care of the hogs?
A. No, sir.
Q. How many times were you in Saltpeter cañon during the year 1880?
A. I have no recollection how many times.
Q. What were you doing in Saltpeter cañon in 1880?
120 A. I have said before, I went after cattle whenever they sent me for cattle, or else to look after the hogs.
Q. Was there cattle in Saltpeter cañon?
A. Sometimes there were.
Q. How many were in Saltpeter cañon?
A. Sometimes as many as a hundred or two hundred.
Q. Did these cattle go wherever they pleased?
A. Yes, sir.
Q. Did you ever count those cattle?
A. No, sir.
Q. You are not able to state how many there were then, are you?
A. No, sir.
Q. Are you able to state how many hogs there were?
A. No, sir; I never counted them.

Redirect examination by A. A. JONES:

Q. How did the hogs in Saltpeter cañon get water?
A. In the springs of water that were in the cañon.
Q. Then there are springs over in there, are there?
A. Yes, sir.
Q. What kind of springs?
A. They are just such springs where you can get enough water to allow the animals to drink.

Q. Are there any springs in Rail cañon?
A. Yes, sir.
Q. You stated in answer to a question by Mr. Catron that these cattle, hogs and horses went wherever they pleased; do you mean to say that they went outside of this tract of land?

Objected to as leading.
Objection sustained.

121 Q. Explain what you mean by that statement which you made to Mr. Catron that those cattle and hogs were allowed to go wherever they pleased.
A. I mean to say that I believe the horses and cattle and hogs that were in Saltpeter cañon went all over the cañon as they pleased, because they had no one to look after them there.
Q. Well, where did these horses actually go, and cattle and hogs?
A. Every time I went there I used to find them at the same place at Saltpeter.
Q. What do you know of the country there as to forage, etc.?
A. It was very good.
Q. How was it over in Rail cañon?
A. The same.
Q. And up in the Coal cañon?
A. The same.
Q. And in Spring cañon?
A. The same.

Testimony of John Q. Adams.

JOHN Q. ADAMS sworn.

Direct examination by A. A. JONES:

Q. What is your name?
A. John Adams.
Q. Where do you reside?
A. On Dawson's ranch.
Q. You mean John B. Dawson's?
A. Yes, sir.
Q. How long have you known Mr. Dawson?
A. Something over twenty years.
Q. Where has he resided during that time?
A. On his ranch at the Vermejo.

122 Q. I will read you a description of a piece of land: "All the land in the valley or drainage of the Vermejo river, in the county of Colfax, Territory of New Mexico, within the following boundaries: Commencing at the dam on said river, at the upper end of John B. Dawson's farm, thence running to a high point of rocks on the north side of the Vermejo cañon, thence following along the top of the divide west of Rail cañon to the head of Saltpeter cañon, thence down along the top of the divide east of Saltpeter cañon to a point on a line with said John B. Dawson's rock fence, thence following the line of said rock fence across the

Vermejo to the top of the divide, between the Vermejo and Van Bremmer cañons; thence following the top of said divide to the head of Coal cañon, and thence along the top of the divide east of Coal cañon to a point on said divide nearest the place of beginning, thence to the place of beginning." Do you know where that tract of land is?

A. Yes, sir.

Q. Who resides upon that land?

A. John B. Dawson.

Q. Have you been upon that property yourself?

A. Yes, sir.

Q. During what period of time?

A. I worked there, more or less, for twenty years.

Q. Then you first went there in 1871 or 1872?

A. Yes, sir.

Q. State whether or not you were around over this property to any extent.

A. Yes, sir.

Q. To what extent?

A. I have worked on it.

Q. What particular work were you doing?

A. I fenced a good deal, took care of cattle, horses, hunting hogs, and cattle.

Q. Did Dawson have any cattle and hogs and horses on this property?

A. Yes, sir.

123 Q. On how much of it?

A. Well, they were all over it at times.

Q. How long were you on that place the first time you were there?

A. I don't remember; two or three months.

Q. State as near as you can the various periods of time that you have been on that property.

A. I worked there by the month, two or three months; and by the year, four years at one time. I worked there by the year since several times.

Q. At what time did you work the four years?

A. I went there in February, 1884, and worked there four years steady.

Q. Worked there until 1888?

A. Yes, sir.

Q. And where did you live from 1871 on up during the times that you were not at work for Mr. Dawson?

A. I was living above, on the Vermejo, with a man named Salyers; then I went to the San Juan with him, and came back and went to work for Mr. Dawson again.

Q. What work were you doing for Salyers?

A. I was running cattle part of the time.

Q. How long did you stay up in the San Juan?

A. About a year and a half.

Q. What period of time was that?

A. I don't remember the year. It was in 1870 some time.

Q. And, so you have been either living on this property, or in the vicinity of it, ever since 1871 or 1872, with the exception of the year and a half you were over on the San Juan?

Objected to by plaintiff's counsel.

Question withdrawn by Mr. Jones.

Q. How much of the time since 1871 or 1872 have you lived away from the vicinity of this property?

124 A. Not over two years.

Q. When you were working for Salyers, were you ever around near this property, or upon it?

A. Yes, sir.

Q. How often?

A. Well, there was three months I was passing there every day, but was living at Salyers and carrying the mail to Elkins.

Q. And during the other times?

A. I would be there very often.

Q. During what years were you working for Salyers with his cattle?

A. I don't remember the years.

Q. About when was it; in the seventies?

A. Yes, along in the seventies, I think. I was there at Salyers about six years.

Q. How far above Dawson's place did Salyers live?

A. Ten or eleven miles.

Q. What other cattle was there around in that country there during these years?

A. About Salyers place?

Q. Yes, sir.

A. Hunt's, Curtis', and some Mexicans.

Q. What time did Curtis go in there with his cattle?

A. In the seventies some time.

Q. Did Hunt go in there before or after Curtis?

A. They went in afterwards.

Q. How were cattle managed in those days, Mr. Adams?

A. They generally had ranges for them.

Q. Did they keep their cattle on their ranges?

A. They tried to keep them on the ranges as much as they could.

Q. Where did they keep their cattle?

Objected to by plaintiff's counsel.

125 Objection overruled.

Exception reserved.

A. The Hunts kept theirs on the upper Caliente, and the Curtis's kept theirs down below the Hunts, and the Mexicans kept theirs in different cañons; they had small bunches.

Q. Where did Dawson keep his?

A. He calculated to keep his in Rail cañon, Coal cañon, and the head of Saltpeter cañon.

Q. How was the grass in that country during those years?

A. Some years it was good. There was years it was bad, on account of drouth.

Q. Since what time has the grass been bad?

A. We haven't had any grass to amount to anything for three or four years.

Q. How was the grass, say up to 1880, 1881 and 1882?

A. It was better at that time.

Q. Did the cattle of other people get onto this tract of land?

A. Some of them did at times.

Q. Do you know what would be done with them if they did get in there?

A. We calculated to keep them out the best we could.

Q. In what way did you try to keep them out?

A. Drive them out.

Q. Well, did Dawson's cattle and horses, or hogs, get out of this tract of land?

A. Yes, sir; at times.

Q. What would be done with them when they would get out?

A. Drive them back.

Q. What proportion of them would get out?

A. Oh, once in a while a few would scatter out; not many of them.

126 Q. What proportion of the cattle of other people would get in?

A. Well, about the same; only there would be large herds outside.

Q. Well, now, up to 1882 and 1883, how many cattle of other people got in there? How many did you ever see in there, at any one time?

A. I never counted them.

Q. Well, were there many?

A. We would find a few here and there.

Q. Were you around there hunting for cattle?

A. Yes, sir; I would be sent out to see if there was any of Mr. Dawson's stock out or any others was in there.

Q. Did Dawson tell you where he wanted to keep his stock?

Objected to by Mr. Catron.

Objection sustained.

Q. I will ask you, Mr. Adams, what was the occasion of your driving Mr. Dawson's cattle back within certain lines, and the cattle of other people out?

A. I was working for Dawson, and, of course, I went according to his orders.

Q. Were there any cattle, or horses, or other animals, up in Coal cañon?

A. At times, yes, sir.

Q. What times?

A. Well, every year.

Q. How many of the years did Dawson have stock on those different cañons?

A. Every month in the year.
Q. Were you well acquainted in that vicinity?
A. Yes, sir.
Q. Did you hear neighbors around there speak of this tract of land as the property of any one?
A. Yes, sir; I have heard a great many speak of it.
Q. They spoke of it as whose property?

127 Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved for plaintiff's counsel.

A. John B. Dawson's.

Cross-examination by Mr. T. B. CATRON:

Q. How many people live in that vicinity?
A. I never counted them, but there is several families.
Q. Can you give the first time you were there at that place or in that vicinity?
A. I was in Cimarron in 1868.
Q. I didn't ask you about Cimarron; you know Cimarron is fifteen miles from that place. I asked you about that vicinity of Dawson's ranch.
A. I think it was the first part of 1869.
Q. How long did you stay there then?
A. I went through there.
Q. Just went along the road?
A. Yes, sir.
Q. What were you doing?
A. I was hunting work.
Q. But you didn't stop there then?
A. I looked for work there.
Q. I asked you the question if you stopped there and remained there?
A. No, sir.
Q. Just passed on through?
A. Yes, sir.
Q. Where did you go to?
A. Went down the Vermejo, then crossed to Trinidad.
Q. Did you remain in Trinidad any length of time?
A. No, sir; I came back afterwards in a short time.
—— ——?

128 A. About a month.
Q. Where did you go to from there?
A. To Cimarron.
Q. How long did you remain at Cimarron?
A. Went to work there and worked about a year.
Q. What is the distance from Cimarron to Dawson's ranch?
A. I don't know.
Q. From Cimarron to Vermejo?
A. I don't know what that is.

Q. What is the distance it is generally called in that vicinity?
A. I don't know that I ever heard any one say.
Q. You have traveled over the country frequently?
A. Yes, sir.
Q. Could you not form some judgment as to the distance?
A. Yes, sir.
Q. Well, what is your best judgment of the distance from Cimarron to Vermejo?
A. About twelve miles.
Q. You have got to go by Vermejo to get to Dawson's ranch?
A. You don't strike the Vermejo until you get just below Dawson's.
Q. What is the distance from Cimarron to where you strike the Vermejo, in going from Cimarron to Dawson's?
A. I don't know.
Q. You have no idea about it?
A. Not where you strike the place below Dawson's.
Q. It is farther than it is down to the Vermejo, is it not?
A. Yes, sir; over the stage road.
Q. How far is Dawson's ranch above the stage road where the stage road crosses the Vermejo?

— ——.

129 Q. How long did you remain in Trinidad?
A. I don't know.
Q. Is it not five or six miles?
A. No, sir.
Q. Is it two miles?
A. I don't know.
Q. Haven't you any idea?
A. No, sir.
Q. You carried the mail for three months daily over that road, didn't you?
A. I carried the mail from Elkins to Vermejo, below Dawson's.
Q. Below Dawson's is close to the stage road?
A. Yes, sir.
Q. In carrying that you carried it right by Dawson's house?
A. Yes, sir.
Q. How long did you carry it?
A. Three months.
Q. You went by every day, didn't you?
A. No, sir; not every day.
Q. How often did you go in a week?
A. Twice.
Q. Twice up and twice down?
A. Four days in a week I passed Dawson's.
Q. Four days in each week for three months, and yet you are unable to form any judgment as to the distance?
A. No, sir.
Q. Who did you first work for in that vicinity?
A. Mr. Dawson.
Q. In which year was it you worked for him?

A. I think it was in 1871.
Q. Was that before or after you carried this mail?
A. Before.
Q. When you carried this mail you just went up and down the public road?
130 A. Yes, sir.
Q. That road went right up the river, didn't it?
A. Yes, sir.
Q. And you always kept in that road and did not go out over the country?
A. No, sir.
Q. While you were carrying that mail you only saw what could be seen along the road, did you?
A. Yes, sir.
Q. How long did you work for Dawson before you carried that mail?
A. I don't recollect the years.
Q. Could you tell how long it was you worked for him before you carried the mail—how many months, years or days?
A. No, sir; I don't recollect the year that I carried the mail.
Q. And you don't recollect the year you worked for Dawson, do you?
A. I think it was in 1871.
Q. You are right certain of that, are you?
A. Yes, sir.
Q. How long did you work for Dawson at that time?
A. About three months.
Q. What were you working at?
A. Different things; farming, taking care of cattle.
Q. What time of the year was it you worked?
A. In the fall.
Q. You were doing farming in the fall, were you?
A. Gathering crops, and so on.
Q. How long were you occupied in gathering crops?
A. I don't recollect how long it was; I was not gathering crops all the time.
131 Q. What else were you doing?
A. Looking after cattle, hogs and horses.
Q. How did you go after the cattle and hogs?
A. Horseback.
Q. Where did you stay and sleep?
A. Dawson's house.
Q. Every night?
A. Yes, sir.
Q. You would ride out in the daytime?
A. Yes, sir.
Q. Looking around after the horses and hogs and cattle?
A. Yes, sir.
Q. How many horses had Dawson there in the year 1871?
A. I don't remember.
Q. How many cattle did he have?

A. I don't know.
Q. How many hogs had he?
A. I don't know
Q. These hogs, cattle and horses, except when you looked after them, were allowed to go at will around there, were they?
A. Yes, sir.
Q. You worked for him three months in 1871; when did you next work for him?
A. I don't recollect the years; it was in the seventies.
Q. Who did you work for next after you worked for Dawson the first time?
A. For Jules Howard, in Cimarron.
Q. How long did you work for him?
A. I helped him put in a crop in the spring of the year.
Q. In 1872?
A. Yes, sir.
132 Q. How long did you work for him?
A. Helped him put in a crop in the spring.
Q. Then what did you do?
A. I think it was in 1872 I worked for the English company.
Q. How long did you continue to work for the English company?
A. I worked all that summer.
Q. Then who did you work for next?
A. Then I went to Colorado.
Q. How long did you remain in Colorado?
A. I went there in the fall and came back that winter.
Q. And you came back in the winter of 1873–'74?
A. I would not say what year.
Q. When you came back, what did you do?
A. Then I went to Salyers.
Q. You say, then, you worked for Salyers six years?
A. I made his place my home.
Q. You lived at his house for six years after you came back from Colorado?
A. I made that my home.
Q. Didn't you state a while ago you worked for him?
A. Yes, sir.
Q. During those six years you made his place your home, what did you do?
A. Farming, working with cattle, herding cows.
Q. Who were you farming for?
A. Saylers.
Q. Did you work on Salyers' ranch during the whole of that six years?
A. No, sir.
Q. Where else did you work?
A. I worked at Lacey's and Coleman's.
133 Q. Lacey and Coleman's ranch was the same, or did they have different ranches?
A. They had separate ranches.

Q. You worked on these three ranches during the six years?
A. Yes, sir.
Q. How far was Lacey's ranch from Dawson's?
A. I don't know. I never surveyed it.
Q. Lacey's ranch was on the Vermejo?
A. Yes, sir.
Q. Which was farthest up the stream?
A. Dawson's.
Q. Lacey's ranch is between Dawson's ranch and the old stage road, is it not?
A. Yes, sir.
Q. Where was Saylers' ranch from Lacey's ranch; that is, with reference to that stream; up or down the stream?
A. Above.
Q. Saylers' ranch was nearer to Dawson's ranch than Lacey's?
A. Yes, sir.
Q. Was Saylers' ranch above Dawson's ranch?
A. Yes, sir.
Q. I understood you to say awhile ago it was nine or ten miles above it.
A. It is above Dawson's ranch. I think it is that far.
Q. Coleman's ranch is above Dawson's, too?
A. Yes, sir.
Q. Were there any other people in there that had ranches about that time?
A. Yes, sir.
Q. State who they were.
A. John Brackett, Wade Brackett and his brother.
Q. These were different ranches—John's and Wade's?
134 A. Yes, sir. Then there was some Mexicans above.
Q. Up in what is called the Vermejo?
A. Yes, sir; above Saylers' ranch.
Q. From 1870 up to 1883 these people that had cattle there each had a range, which was marked out and designated for each man's cattle to range on?
A. Yes, sir.
Q. Each man attempted to keep his cattle on his own range?
A. Yes, sir; he tried to.
Q. That is, a certain portion of the country was taken up as a ranch by each one of these men and attempted to be held as a mere range, was it not, for his cattle and stock?
A. Yes, sir.
Q. And each one respected every other man's range?
A. Yes, sir.
Q. Attempted to keep their cattle separate, according to the lines of these ranges?
A. Yes, sir.
Q. That division covered a great deal of country, didn't it?
A. I judge so, by the cattle.
Q. You could judge so by the extent of the country, could you not?

A. Yes, sir.

Q. How far did these ranges extend up and down the Vermejo river?

A. Those that were on the Caliente were not on the Vermejo.

Q. As a general thing, the ranges crossed the river, didn't they; or extended from the river out one way?

A. From the Rio Caliente east; sometimes down on the Vermejo.

Q. How far down on the Vermejo did these ranches extend?

135 A. The Caliente empties into the Vermejo at the Coleman ranch.

Q. You evidently do not understand me. Between 1870 and 1883, which was the last ranch or range on the Vermejo river?

A. I don't recollect.

Q. Did they extend down below the old stage road?

A. I don't know anything about the ranches on the Vermejo.

Q. You know about the ranches along on the Vermejo river, don't you?

A. Below the stage road, no.

Q. From the stage road up, you know, don't you?

A. From Dawson's up, yes.

Q. Didn't you know anybody below Dawson's?

A. Lacey had some cattle there.

Q. Didn't Dick Miller have some?

A. I was not acquainted with Miller.

Q. He kept the stage station, didn't he?

A. I don't know.

Q. Who did keep the stage station while you were carrying the mail through there?

A. Tony Maloche kept it one time.

Q. Did Judge Lee keep it at one time?

A. He lived there once; I was not down in that part much?

Q. You were not much of a traveler around?

A. No, sir.

Q. Rather a home body?

A. Yes, sir.

Q. These ranges extended, then, across the country clear up to the Ojo Caliente?

A. Which ranges?

Q. Those you have mentioned.

A. The Caliente ranges?

136 Q. Clear from Lacey's ranch up different ranges extended across the country towards the east?

A. Dawson's did not; no, sir.

Q. Did anybody else's?

A. There didn't anybody have cattle above Dawson's until you got to the Caliente.

Q. How far is it from Dawson's ranch to the Caliente?

A. I don't know.

Q. Is it a long distance or a short distance?

A. It is not a long distance.

Q. Is it about eight or nine miles?
A. I don't know.
Q. How long does it take you to ride it in going from Dawson's, going at an ordinary gait?
A. If a man rides fast he might ride it in a couple of hours.
Q. If he rides slow, how long would it take him?
A. Might take him all day.
Q. That is the nearest you can give us about the distance?
A. Yes, sir.
Q. You have never gone over that distance sufficiently to give any idea about it?
A. No, sir.
Q. How wide is the valley of the Vermejo at Dawson's house?
A. I don't know.
Q. How far is it from the edge of the river to Dawson's house?
A. I don't know.
Q. Is it ten miles?
A. I don't know; I never measured it.
Q. Is Dawson's house in the valley of the river?
A. Yes, sir; on one side of the river.
Q. Is it in the valley?
A. That is what they call the valley.
137 Q. Which is the farthest—from Dawson's house to the river or from Dawson's house to the foot-hills on the other side?
A. On the other side from his house.
Q. The valley extends from the edge of the river to the foot-hills?
A. Yes, sir.
Q. Is it only about 200 yards from his house to the river?
A. I don't know.
Q. How wide is the valley on the opposite side of the river from Dawson's house?
A. I don't know.
Q. Have you ever been over it?
A. Yes, sir.
Q. You have plowed over it, haven't you?
A. Pretty often.
Q. Does not the Acequia run along near the foot-hills?
A. Yes, sir; part of the way.
Q. Right in front of Dawson's house, how far is it to the Acequia?
A. I don't know.
Q. Is it two hundred yards?
A. I don't know.
Q. Is it five hundred yards?
A. I don't know.
Q. Is it five miles?
A. No, sir.
Q. Twenty-five miles?
A. I don't know how far it is.
Q. What year did you say you made your home at Saylers' ranch?
A. I don't remember the year.

Q. You went to this place about 1874, didn't you?

A. I don't remember the year.

138 Q. Didn't you state your best recollection was you came back from Colorado in the winter of 1873 or 1874, and then you made your home at Saylers' ranch or house after you got back, for six years?

A. Yes, sir: after I came back from Colorado.

Q. That would take you up to 1879 or 1880, wouldn't it?

A. Yes, sir.

Q. After you left Saylers' ranch as your home, where did you go to?

A. I went to San Juan with him.

Q. You stayed in San Juan about a year and a half?

A. Yes, sir.

Q. Then came back in 1882?

A. Yes, about that time.

Q. Then when you came back from San Juan, can you state about when it was you got back from there?

A. No, sir.

Q. Can't you tell whether it was summer, winter, spring or fall?

A. When I came back, on part of the road there was snow, on other parts there was not: we generally have snow in the winter.

Q. You mean it was about October, November or December, 1882. Is that what you mean?

A. No, sir: it was the fore part of the spring.

Q. It was before the snow went off?

A. Yes, sir.

Q. What did you do when you got back?

A. When I came back from San Juan, I went with a man named Jack Rodes.

Q. Where did he live?

A. On the Vermejo.

Q. How far from Dawson's ranch?

A. I don't know how far.

139 Q. Above or below it?

A. Above.

Q. Was it near Coleman's ranch?

A. It was above there, still.

Q. Was it above Saylers'?

A. Yes, sir; I think where he lived at that time, was called the Brigado Cordova place.

Q. How long did you remain with Rodes?

A. Me and his brother, named Dick Butler, we went to Red river and put up shingle mills together, and made shingles there for awhile.

Q. Give the length of time.

A. We were there off and on, because Rodes was working for J. B. Dawson at that time on his house.

Q. He was a carpenter?

A. Yes, sir; and I went down to help him on part of the work.

Q. During what year was that?

A. I don't recollect the year it was I came back from San Juan.
Q. The same year you came back?
A. Yes, sir.
Q. Then you worked at the shingle mill on Red river part of the time and part of the time on Dawson's house?
A. Yes, sir.
Q. About what time of year did you conclude that work?
A. I went back to the shingle mill after I had worked there awhile, for Dawson wanted some more shingles to put onto his house.
Q. How long did you work at the shingle mill until you stopped work there?
A. I don't recollect what time I did stop, but I know I did not stop long. I got out a lot of shingles and then I went back to Dawson's to work.
140 Q. What time did you go back to Dawson's to work?
A. It was some time that same fall I came back from San Juan.
Q. That would be about the fall of 1882, according to your statement?
A. Yes, sir.
Q. What work did you engage in at Dawson's then?
A. In the summer time I worked on the house; sometimes irrigating the orchard.
Q. You irrigated the orchard in the fall, did you?
A. Yes, sir.
Q. That is all you did then, is it?
A. Different chores; hauling wood, cutting wood.
Q. How long did you remain at Dawson's that time?
A. I worked there until along in December.
Q. Then what did you do?
A. I went up on the Vermejo.
Q. How far up?
A. I went in there about what is called Red cañon; that comes down from Red river; it is what is called York cañon.
Q. That is about twenty-five miles from Dawson's ranch?
A. I don't know.
Q. Quite a long distance?
A. Yes, sir.
Q. It is above Saylers' ranch?
A. Yes, sir.
Q. How long did you stay there?
A. I staid around there most of the winter; and then I went to work for John Graves, working around at different places, carpentering and so forth.
Q. That was away up near Elkins?
A. Yes, sir.
141 Q. Close to Manby's ranch?
A. No, sir.
Q. That was fifteen or sixteen miles above Saylers' ranch, was it?
A. I don't know how far it was.

Q. It was as far from Saylers' ranch as Sayler's ranch was from Dawson's, was it not?
A. I think it was.
Q. How long did you remain there?
A. About a year.
Q. Then where did you go to?
A. Went back to Mr. Dawson's.
Q. That was in 1884?
A. Yes, sir.
Q. There you remained four years—until 1888?
A. Yes, sir.
Q. Where have you been since 1888?
A. I went and farmed on land up on the Vermejo part of the time.
Q. Whereabouts?
A. Right in there close to the mouth of York cañon; and I worked at cutting ties and hauling ties.
Q. York cañon is way up at the head of the Vermejo, is it not?
A. No, sir.
Q. It is pretty close to Elkins, is it not?
A. Yes, sir.
Q. And that is about twenty-five miles from Dawson's, is it not?
A. I don't know how far it is.
Q. Do you tell me you have carried the mail from Vermejo to Elkins for three months, four times a week, and that you don't know the distance?
A. No, sir, I don't know the distance; I had no way of measuring it.
Q. How long did it take you to carry the mail from Vermejo station to Elkins?
142 A. I would take the mail one day and come back the next.
Q. How long did it take you to go from Vermejo station to Elkins, on horseback, the way you traveled?
A. It took me the biggest part of a day.
Q. Eight or ten hours?
A. Yes, sir.
Q. How many miles did you travel in an hour, about?
A. I did not have a very fast horse.
Q. You traveled four or five miles an hour, didn't you?
A. I don't think I did.
Q. Did you travel three miles an hour?
A. I don't know.
Q. You always made it inside of a day?
A. I made it in the biggest part of a day.

Redirect examination by A. A. JONES.

Q. During the time that you were there, what were the nearest cattle ranges to Dawson's?
A. Lacey was the next neighbor to him, but he did not generally keep cattle there at home, only a few milch cows.
Q. Where did he keep his cattle?

A. Generally kept them down on his ranch, and kept some in what is called Gotchupin cañon.

Q. How far is that cañon from Dawson's ranch?

A. I don't know how far it is; it is way above Caliente.

Q. Did any one have cattle over there on Crow creek during these times, during the seventies?

A. There may have been a few head.

Q. Who was there over on the Van Bremmer?

A. I think Chase & Dawson had some cattle there.

143 Q. During what year was that?

A. I don't remember.

Q. On what part of Van Bremmer were those cattle?

A. I think about at the mouth of the cañon, from there down.

Q. Did Pat Lyons have any cattle over there on the Van Bremmer?

A. He had them above.

Q. Do you know how he managed his cattle with respect to this tract of land?

Objected to as immaterial by plaintiff's counsel.

Objection sustained by the court.

Q. You stated in your cross-examination that each cattleman there had his range, and that each man respected the range of the other man and kept their cattle separate, that is up to 1883 or 1884—in what way was that done?

A. When they were hunting cattle at the round-up, if the found any of their cattle out they would take them back to their range.

Q. What has become of the cattle that belonged to the people up there, except Dawson's?

A. Most of them have been sold to the Maxwell land grant.

Q. What has become of their ranches and ranges?

A. They all sold their improvements.

Q. How many people up there who owned cattle sold to the company?

A. I don't know exactly how many did sell out to the company.

Testimony of Antonio Perez.

ANTONIO PEREZ sworn.

Direct examination by A. A. JONES:

Q. What is your name?

144 A. Antonio Perez.

Q. Are you acquainted with John B. Dawson, the defendant in this case?

A. Yes, sir.

Q. How long have you known him?

A. Since 1871.

Q. Where did you reside at that time?

A. At El Ponil.

Q. Where did Dawson reside at that time?
A. On his ranch.
Q. On what stream is his ranch?
A. On the Vermejo.
Q. I will read you a description of a piece of land: "All the land in the valley or drainage of the Vermejo river of in the county of Colfax, Territory of New Mexico, within the following boundaries: Commencing at the dam on said river, at the upper end of John B. Dawson's farm, thence running to a high point of rocks on the north side of the Vermejo cañon, thence following along the top of the divide west of Rail cañon to the head of Saltpeter cañon, thence down along the top of the divide east of Saltpeter cañon to a point on a line with said John B. Dawson's rock fence, thence following the line of said rock fence across the Vermejo to the top of the divide, between the Vermejo and Van Bremmer cañons; thence following the top of said divide to the head of Coal cañon, and thence along the top of the divide east of Coal cañon to a point on said divide nearest the place of beginning, thence to the place of beginning." Do you know where that tract of land is?
A. Yes, sir.
Q. Who resides upon that tract of land?
A. Mr. Dawson.
Q. Is that where he resided when you first knew him?
A. Yes, sir.
Q. Did you ever work for Mr. Dawson?
145 A. Yes, sir.
Q. During what years?
A. For a period of three years; from that time on whenever he employs me.
Q. During what three years was it you worked for Mr. Dawson?
A From 1871 up, three years continuously.
Q. And after that time where have you resided?
A. At El Ponil.
Q. How far is El Ponil from the Vermejo?
A. About fourteen miles.
Q. Since you have been residing on the Ponil have you ever been around over the Vermejo at any time?
A. Yes, sir.
Q. How frequently?
A. At times, sir, when Mr. Dawson has employed me.
Q. During these three years that you worked for Mr. Dawson were you around over this tract of land to any extent?
A. Yes, sir.
Q. In what way, if any, was Mr. Dawson occupying that tract of land?
A. Farming it, and taking care of his property, also, and his animals.
Q. Where did he keep his animals?
A. In the cañons that empty into the river where he has his farm.
Q. Where did he keep his hogs?

A. In the cañons.

Q. And his horses?

A. They were all mixed in the different cañons there. As they were animals, and loose, they run from one cañon to the other.

Q. How long did Dawson have animals in those cañons, so far as you know?

A. Since that time up to this day, sir.

146 Q. Did you ever see the cattle or animals of other people in those cañons?

A. No, sir.

Q. Did you ever hear the people around that country there speak of that tract of land as belonging to any one, or as the property of any one?

A. Yes, sir.

Q. They spoke of it as whose property?

Objected to by plaintiff's counsel.

Objection overruled by the court.

Exception reserved by plaintiff's counsel.

Cross-examination by Mr. T. B. CATRON:

Q. Do you speak English?

A. No, sir; only Spanish.

Q. How many people did you hear speak of that property?

A. I have no recollection, but many persons have spoken of that property as Mr. Dawson's, and he himself has told me that it was his property.

Mr. CATRON: I ask that that part of his answer be stricken out, except where he says he don't remember how many persons.

The COURT: That part of the answer is stricken out.

Q. Did these people speak English or Spanish?

A. In Spanish.

Q. People in that vicinity?

A. Yes, sir.

Q. Do all the people in that vicinity speak Spanish?

A. Yes, sir; they all speak Spanish.

Q. Did they all speak Spanish in 1871?

A. Yes, sir.

Q. Speak it as well as you do?

A. Yes, sir.

147 Q. They were all Americans, were they not?

A. No, sir; they were Mexicans.

Q. All of them were Mexicans living in the Vermejo, in the vicinity of Dawson's house?

A. I am speaking of the people living at Ponil.

Q. The people who talked to you about the ranch were the people who lived in the Ponil?

A. They live now at El Ponil.

Q. You did not talk to the people living over in the Vermejo about this, only those living in the Ponil?

A. And also with some that lived there that are the servants of Mr. Dawson.

Q. But those only that were working for Dawson, besides those that lived at the Ponil, were all that you talked with?

A. Those are the persons; I don't know how many.

Q. The most you talked to lived at the Ponil?

A. Yes, sir.

Q. Ponil is about fourteen miles from the Vermejo?

A. Yes, sir.

Q. There are no settlements between Ponil and Vermejo?

A. No, sir.

Q. You say you commenced to work for Mr. Dawson in 1880, and worked for him for three years?

A. Yes, sir.

Q. Did you stay at Dawson's house?

A. Yes, sir.

Q. What work did you do?

A. Whenever I worked, I lived at his house.

Q. What work did you do for him?

A. Worked sometimes with the animals, sometimes at the ranch; wherever he commanded me to work.

Q. You say the animals run loose; what work did you do with the animals?

148 A. In driving them in the cañons and keeping them together.

Q. You took them off the fields, too, didn't you?

A. Yes, sir; and used to drive them up the cañons.

Q. When you drove them up in the cañons, you let them go?

A. Yes, sir.

Q. And they would run there until some time afterward, when you would go out and look after them again, would they?

A. Yes, to see them and gather them up.

Q. They scattered a good long distance, didn't they?

A. Yes, sir; but I could not tell you what distances.

Q. How many cattle had Dawson there in 1871?

A. About three hundred.

Q. Don't you know he didn't have over fifty?

A. No, sir. That was the number, more or less.

Q. Of what did they consist; what kind of cattle?

A. They were cattle; he also had hogs and horses.

Q. Do you mean three hundred cattle, hogs, horses and all?

A. Yes, sir.

Q. How many horses had he?

A. I am not sure whether there was ten, twelve or fifteen.

Q. How many hogs?

A. About twenty or thirty.

Q. These animals went from one place to the other, did they?

A. Yes, sir, from one cañon to the other; we often took them from one cañon to the other where the grass was better.

Q. They would go by themselves from one cañon to the other?

149 A. At times they would.

Q. Sometimes they would go up on the mesas, would they not?

A. They would not go up very high.

Q. Sometimes they went clear over the mesas, didn't they—some of them?

A. Sometimes they would go. Sometimes they would climb up where they would find places, but you cannot climb up because in these cañons there are many places you can't climb up.

Q. The sides of these cañons are very steep?

A. At several places.

Q. They are so steep that animals will generally not go up them?

A. They are very high; they cannot go up.

Q. These cañons are too steep to cultivate the sides of the cañons?

A. Yes, sir; you cannot cultivate them.

Q. How wide is the valley of the Vermejo at Dawson's house?

A. I can't tell you what is the width of it; I could only tell by measuring it.

Q. You have some judgment about distances, haven't you?

A. I could only tell you about distances if I was to pay particular attention to it.

Q. You know how much a vara is?

A. Yes, sir.

Q. How many varas is it from Dawson's house to the river?

A. I have already stated I do not know. Perhaps you do not understand me. I could not tell you what is the distance from heaven to earth.

Q. That is a longer distance than I want to know about. Is it over two hundred varas from Dawson's house to the river?

A. It may be that, more or less.

150 Q. Which side of the river is widest, at Dawson's house?

A. On the south side.

Q. How much wider is the south side than the north side of the river at Dawson's house; I mean the valley?

A. It is narrower on this side, because of the cañons on this side empty into the river.

Q. Haven't you plowed all over that ground?

A. Yes, sir; I have worked with Mr. Dawson on that land, plowing it, but I never paid any attention as to the distances.

Q. Do you know the dam that is above Dawson's house?

A. Yes, sir.

Q. You know the stone fence that is below it, don't you?

A. Yes, sir.

Q. Now, where is the widest place in that valley between these two points? At what point is the valley the widest across the river from one foot-hill to the other?

A. On this side of the river it is the wider.

Q. How many varas is the widest point on this side of the river to the foot-hills?

A. I cannot estimate it.

Q. Would it be a thousand varas?

A. No, sir.
Q. Six hundred?
A. About two hundred or two hundred and fifty yards.
Q. The valley of the river extends from the foot-hill on one side to the foot-hill on the other side, does it not?
A. Yes, sir.
Q. You know Saltpeter cañon, don't you?
A. Yes, sir, on this side.
151 Q. Is not the mouth of Saltpeter cañon below where the cañon comes into the river; is not that down the river below the stone fence?
A. Yes, sir; a little below.
Q. Is it not two or three miles below?
A. I don't know what the distance is.

Redirect examination by A. A. JONES:

Q. Do any of these cañons empty into the river above the stone fence?
A. Yes, sir; they all run into Dawson's ranch.
Q. And this valley extends out there and runs up into these cañons?

Objected to as leading by plaintiff's counsel.
Objection sustained.

Testimony of Jesus Torres.

JESUS TORRES sworn.

Direct examination by A. A. JONES:

Q. What is your name?
A. Jesus Torres.
Q. Where do you reside?
A. At Vermejo.
Q. Are you acquainted with John B. Dawson, the defendant in this case?
A. Yes, sir.
Q. How long have you known him?
A. Since 1883 up to date.
Q. I will read you a description of a piece of land: "All the land in the valley or drainage of the Vermejo river, in the county of Colfax, Territory of New Mexico, within the following boundaries: Commencing at the dam on said river, at the upper end of John B.
Dawson's farm, thence running to a high point of rocks on
152 the north side of the Vermejo cañon, thence following along the top of the divide west of Rail cañon to the head of Saltpeter cañon, thence down along the top of the divide east of Saltpeter cañon to a point on a line with said John B. Dawson's rock fence, thence following the line of said rock fence across the Vermejo to the top of the divide, between the Vermejo and Van Brem-

mer cañons; thence following the top of said divide to the head of Coal cañon, and thence along the top of the divide east of Coal cañon to a point on said divide nearest the place of beginning, thence to the place of beginning." Do you know where that tract of land is?

A. Yes, sir.

Q. Who resides upon that land, if any one?

A. John B. Dawson.

Q. Have you ever lived upon that tract of land?

A. No, sir.

Q. Have you ever worked any for Mr. Dawson?

A. Yes, sir.

Q. How long?

A. Since I have known him up to to-day.

Q. Where have you lived during this time?

A. In precinct No. 5, at Vermejo.

Q. Where is that, with reference to this piece of land?

A. Above the Vermejo.

Q. How far above?

A. About fifteen miles.

Q. What kind of work have you been doing for Mr. Dawson?

A. All kinds of work about the house.

Q. Have you done any other work, except about the house?

A. Different kinds of work at times; looking after animals.

Q. During the time that you worked for Dawson did you sleep fifteen miles away from there?

A. In what direction?

153 Q. In any direction.

A. Yes, sir.

Q. You slept fifteen miles away and worked for Dawson in the day-time; is that it?

A. Yes, sir.

Q. Did you ever sleep at Dawson's place?

A. Yes, sir.

Q. How many times have you slept there?

A. I don't remember.

Q. Do you mean to say that you have worked every day and every year for Dawson since 1873 up to the present time?

A. Not all the time; only at times during the year. At times I worked on my own property, and at other times I worked for him.

Q. During the times you were working for him, where did you sleep?

A. On his property.

Q. Well, did Dawson have any animals up there?

A. Yes, sir.

Q. What kind of animals?

A. Cattle, horses and hogs.

Q. Where did they stay?

A. In the cañons and on the sides of the river.

Q. Did he have any animals on this land I read you a description of?

A. Yes, sir.
Q. What kind of animals did he have on that land?
A. Horses, cattle and hogs.
Q. On what part of that land did he have these horses, cattle and hogs?
A. On both sides of the river he has had cattle and horses.
Q. How far out on either side would the cattle and horses go, and the hogs?
154 A. I could not tell you the distance, but in the cañon that is in front of the house, called Rail cañon, and Spring cañon and Saltpeter cañon.
Q. How about the cañon west of the house?
A. On this side he has had cattle and horses also.
Q. How much of the time has he had cattle and horses in these cañons?
A. Since I have known him, sir.
Q. Did the cattle or stock of other people go into these cañons?
A. Yes, sir; but, at the same time, the man gives orders to his working men to drive them out.
Q. Up to 1883 or 1884, how many cattle of other people got into these cañons?
A. I could not tell how many.
Q. Well, can you estimate it in any way?
A. I could not tell you how many, because I don't know.
Q. Did Dawson's animals get out of these cañons; I mean out away from his house?
A. Yes, sir, at times they would, sir.
Q. What would be done with them when they would get out?
A. He would send out men after them and bring them back into the cañons.
Q. Are you acquainted with the people around in that vicinity and neighborhood?
A. Some of the persons, yes, sir.
Q. Did you ever hear any of these people speak about this land as belonging to any one?
A. Yes, sir.
Q. They have spoken of it as belonging to whom?

Objected to by plaintiff's counsel.
Objection overruled.
155 Exception reserved by plaintiff's counsel.

A. To Mr. Dawson.

Cross-examination by T. B. CATRON:

Q. Who did you hear speak of that land as being the property of Mr. Dawson?
A. Different persons.
Q. Give their names.
A. I cannot recollect the names, for there are several persons in the valley.

Q. People living there at Dawson's?
A. No, sir; on the Vermejo.
Q. Above or below Dawson's?
A. Below and above, both.
Q. Give us the name of some one.
A. He, himself, in the first place?
Q. Somebody besides Dawson or his family?
A. Besides him, the people that lived above, on the Vermejo.
Q. Give the names of some of them outside of his family.
A. I can't remember the names of any of them, because there are a good many people that have talked to me about it.
Q. You know all the people there, don't you?
A. Yes, sir.
Q. Know them by name, don't you?
A. Yes, sir; some of them I do.
Q. Tell the names of some of them that you remember speaking about Dawson being the owner of that land.
A. I can't remember the names of the persons that have spoken to me about that.
Q. When was it the men spoke to you about that?
156 A. A few years after I went to live there.
Q. When was it the first one spoke to you?
A. When I first went to live at the place, I knew the place belonged to Mr. Dawson. I knew that because his own family told me.

Mr. CATRON: I ask that that be stricken out as not responsive to the question.
The COURT: The latter part of the answer is stricken out.

Q. The first person outside of Dawson's family: when was it that person spoke to you about that property being Dawson's?
A. The people that lived on the Vermejo; and Juan Gabriel Gonzales was one of the first ones that told me.
Q. Who was present when he told you?
A. He and I alone.
Q. Where is he now?
A. At Vermejo.
Q. He is not here as a witness?
A. No, sir.
Q. At what particular place were you when Gabriel Gonzales told you that?
A. At Vermejo.
Q. This was in the year 1871?
A. No, sir.
Q. In 1873?
A. Yes, sir; in 1873.
Q. How old are you?
A. I am now 33 years old.
Q. How old were you then?
A. About 14 years.

Q. When you were 14 years old you were around talking about land titles, were you?
A. No, sir; I overheard the conversation.
Q. Who was he talking with?
A. In conversation with other people there; with his friends and the people there.
157 Q. Give the name of some one he was talking to.
A. I can't remember.
Q. Is that the only man who you can remember you heard saying anything about it?
A. Yes, sir.
Q. He just said that place where Dawson was living belonged to Dawson, did he?
A. Yes, sir.
Q. That is all he said, was it not?
A. Yes, sir.
Q. Which side of the river is Dawson's house on?
A. On the right side, coming from above the Vermejo down.
Q. He lives in the valley of the Vermejo, does he not?
A. Yes, sir; where the cañon spreads out.
Q. How wide is the valley right there at Dawson's house?
A. I don't know.
Q. Is that the widest part of the valley where his home is?
A. No, sir.
Q. Do you know the dam and the rock fence that has been mentioned to you?
A. Yes, sir.
Q. How wide is the widest part of the valley between those points?
A. Where the stone fence is?
Q. The stone fence is at the very widest part, is it?
A. Yes, sir.
Q. How wide is it there from one foot-hill to the other foot-hill?
A. I could not tell you what the distance is.
Q. One thousand yards?
A. About that.
Q. Does that fence extend from one hill to the other?
158 A. Yes, sir.
Q. Does the fence not run way up the hill on the east side?
A. It does not come up on the ridges on the divide.
Q. It comes up on the side, does it not?
A. Yes, sir; it crosses the valley and river.
Q. And comes up on the side—on the east side of the river, does it not?
A. It does not come up on the hill on the east side.
Q. Are there any other fences connecting with that fence?
A. Yes, sir.
Q. Are the cultivated lands there fenced in?
A. Yes, sir.

Q. Do the fences that fence that in connect with this stone fence?

A. Yes, sir.

Q. What kind of a fence was that?

A. Wire fence.

Q. When were they put there?

A. I don't know.

Q. You know that wire fences haven't been in this country more than eight or ten years, don't you?

A. Yes, sir.

Q. That has been put in there since they brought wire fencing into this country, hasn't it?

A. That fence that joins with the stone fence, it has been some years since I have known that to exist.

Q. How much of your time have you worked for Dawson since 1873?

A. I could not tell you just how much of my time, because at times I worked on my own property, and at times I worked for him.

Q. Where did you work in the winter time?

159 A. At times I worked there, at times on my property.

Q. What did you do at his house in the winter?

A. Different works about the house; hauling wood; working about the house.

Q. How many cattle had Dawson in 1873 at that ranch?

A. I don't remember.

Q. How many horses had he?

A. I don't know.

Q. How many hogs?

A. I don't know, either.

Q. These horses, hogs and cattle were just turned loose and allowed to run around there on the range, were they not?

A. Yes, sir; they were allowed to run loose, and at the same time the men that were working about the house had to go and look after them.

Q. They went out from time to time to look around?

A. Yes, sir.

Q. They didn't ride around them every day?

A. No, sir.

Q. They scattered around pretty well over the range, didn't they?

A. Yes, sir.

Q. Sometimes went away from the range, didn't they, some of them?

A. Some of them did; yes, sir.

Q. Sometimes some of them got away and were not brought back?

A. They would bring them back; they went out and hunted them up until they found them.

Q. They sometimes would not get them back until the next year's round-up, was not that so?

A. I don't remember of going to a round-up myself.

160 Q. You did not attend round-ups?
A. No, sir.
Q. Who did go to the round-up in 1873 for Dawson?
A. I don't know.
Q. You know of their bringing cattle in from the round-ups about that time?
A. Yes, sir; sometimes they did.

Redirect examination by A. A. JONES:

Q. Did they have round-ups in 1873 such as they have now?
A. I don't remember, sir.
Q. Over what tract of land were these cattle allowed to run loose, and the other animals?

Objected to by plaintiff's counsel.
Objection overruled.
Exception reversed.

A. Right at that place, on Dawson's property.
Q. Does the river bottom widen out between the stone wall and the dam?
A. It is not very wide.

Testimony of Mater Crosby.

MATER CROSBY sworn.

Direct examination by A. A. JONES:

Q. What is your name?
A. Mater Crosby.
Q. Where did you reside in 1868?
A. At Cimarron.
Q. What were you doing at that time?
A. Blacksmithing.
Q. For whom?
A. Lucien B. Maxwell.
161 Q. How long were you at work for him at that time?
A. I worked for him for three years there.
Q. Were you acquainted with Mr. Dawson here, the defendant?
A. Yes, sir.
Q. How long have you known him?
A. From about 1868.
Q. Do you remember the time when he went onto the Vermejo?
A. Yes, sir; that is the time he went onto the Vermejo.
Q. Do you know whether Dawson took possession of any land there at that time?
A. Yes, sir.
Q. State whether or not you heard people at that time discussing the boundaries of the land taken possession of by Mr. Dawson and other people.
A. Yes, sir.
Q. State what was said in regard to that.

A. I did not hear you; I am a little deaf.
Q. State what was said in regard to the boundaries of the land taken possession of by Mr. Dawson.

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved by plaintiff's counsel.

A. All the boundaries I knew he took possession of was the drainage in the ranch. He went onto Tarbox & Trueax's ranch.

The COURT:

Q. The question is, what you heard the neighbors say at that time about the extent of the boundaries; not what you know yourself, but what you heard the neighbors say.
A. What I know about it is simply when he went on the ranch, what ranch he went onto.

The COURT: Mr. Jones asked you for what you heard the
162 people say; what statements the neighbors had made with reference to the extent or limits of the land claimed by Dawson.

Mr. JONES:

Q. Simply state the subject of the conversations that were had in regard to it. State the subject of the conversations which you had with these people at that time in regard to the boundaries of the land which Mr. Dawson had taken possession of.

Counsel for plaintiff object to his stating the substance of the conversation.

A. That land was not surveyed at that time, that I know of.
Q. State the conversations—what you heard them say.
A. I heard Mr. Howell say that Dawson had bought the drainage of the Vermejo with the range that he went onto.

Mr. CATRON: I shall ask to strike that out.

Q. Who was this man Howell?
A. He was Maxwell's wagon boss.
Q. Who else?
A. Adam Hessler, a clerk in the store.
Q. Have you been over on this place of Dawson's at any time?
A. Yes, sir.

Mr. CATRON: I ask that these other answers he has made, about Howell and Hessler, be stricken out as not proper evidence.
The COURT: The answers may be stricken out as not responsive. All the testimony of this witness in regard to Howell and Hessler is stricken out.
Exception reserved by defendant's counsel.

Q. State what conversations were had in regard to the land or the boundaries of the land Dawson had taken possession of.

A. He took possession of the entire boundaries known as Tarbox & Trucax's ranch.

Mr. CATRON: I move to strike that answer out.

163 The COURT: The answer is stricken out.

Mr. JONES:

Q. The object of this examination, Mr. Crosby, is to bring out the conversations of these other people; what they said about it, and if they said anything about Dawson's taking possession of any land within any boundaries. I want you to state what that conversation was. Was there any conversation there in regard to the tract of land which Dawson had taken possession of? Do you understand what I say?

A. You asked me what land he took possession of?

Q. I am asking you whether there were any conversations between you and these other people as to the lands which he had taken possession of. Were there any conversations about the possession of Dawson?

A. They were talking about it in the store.

Q. Did they say anything about Dawson's taking possession of that land?

A. Why, he had bought this land of Maxwell.

Mr. CATRON: I object to that answer and ask that it be stricken out.

The COURT: Gentlemen of the jury, that answer of the witness is stricken out.

Q. Did they say he had gone onto any land and taken possession of it?

A. Yes; he moved onto the land; of course he did.

Mr. CATRON: I ask that that answer be stricken out.

The COURT: That answer is stricken out.

Q. Were these people talking about Dawson's moving onto any land or taking possession of any land?

A. They were talking about his getting that land from Maxwell.

The COURT: Did they say anything about the extent of that land?

A. They said he got the ranch of Tarbox & Trucax, and got the drainage with it.

Mr. CATRON: I desire to object to that.

164 Q. Was Mr. Dawson living there at that time?

A. Mr. Chase was living there in the first place.

Q. When did Dawson go there?

A. He went there at the same time and put Chase there.

Q. Do you know that there is a stone wall at Dawson's place?

A. There was no stone wall when I was there.

Q. Well, have you been there since the stone wall was there?

A. No, sir.

Cross-examination by T. B. CATRON:

Q. In what year did you hear Jack Howell and Hessler talking about that thing?
A. In 1868.
Q. You are sure of that, are you?
A. Yes; I think I am.

Testimony of Augustus Dawson.

AUGUSTUS DAWSON sworn.

Direct examination by A. A. JONES:

Q. What is your name?
A. A. G. Dawson.
Q. Are you a son of John B. Dawson, the defendant?
A. Yes, sir.
Q. Do you live now near his place on the Vermejo?
A. I don't live at his place now. I live at the sheep camp. Up to a few years ago I lived there; up to 1885.
Q. I will read you a description of a piece of land: "All the
165 land in the valley or drainage of the Vermejo river, in the county of Colfax, Territory of New Mexico, within the following boundaries: Commencing at the dam on said river, at the upper end of John B. Dawson's farm, thence running to a high point of rocks on the north side of Vermejo cañon, thence following along the top of the divide west of Rail cañon to the head of Saltpeter cañon, thence down along the top of the divide east of Saltpeter cañon to a point on a line with said John B. Dawson's rock fence, thence following the line of said rock fence across the Vermejo to the top of the divide, between the Vermejo and Van Bremmer cañons; thence following the top of said divide to the head of Coal cañon, and thence along the top of the divide east of Coal cañon to a point on said divide nearest the place of beginning, thence to the place of beginning." Do you know where that tract of land is?
A. Yes, sir, I do.
Q. Did you ever live upon that tract of land?
A. Yes, sir; I lived there from the time my father came there up until 1885.
Q. How old were you when you went there?
A. I was six or seven years old. My father went there in 1868. I was born in 1862.
Q. Can you remember whether your father had any stock or not on this place in 1868?
A. He had cattle there when we went there. Mr. Chase was living there.
Q. Now I would like to have you state in detail, as near as you can, the way in which your father has managed that tract of land since 1868.
A. From 1868 up until 1872 I don't remember very much

about it, only that he had stock on the place, but in 1872 my father gave me a few head of cattle and gave me permission of running them in the head of Saltpeter and Rail cañons, and I run them on that range until the time when we sold to the Maxwell Company. My father was always trading in
166 cattle, and whenever he could buy a bunch of cattle he would pick out a few select cows or yearlings and keep them there at home with our own bunch of cattle, and after I got old enough to trade, I bought and traded for cattle and turned them loose in the heads of these two cañons, with his permission. I never had any ranch there, I always kept my cattle on my father's premises.

Q. In what way did you run your cattle in the heads of these cañons?

A. I left them there and would go up, once or twice a week, sometimes I would not be up more than once in two weeks, and would look after them; ride around them. I was familiar with them—working around them all the time. If there was any of them missing, I would go out in the other cañons adjoining and look for them. If there was any cattle in there that did not belong to my father, I would turn them outside.

Q. As a matter of fact then, from 1872, at the time you began to take charge of the cattle there, up to 1883 or 1884, was there any cattle in there belonging to other people?

A. No, sir; except a few head of stray cattle that would get in there.

Q. And did you do anything with those stray cattle when they would get in there?

A. I always drove them out, that is when I was there. In the winters I usually went to school, and there would be somebody else looking after them.

Q. What other animals did your father have in there besides cattle?

A. He had horses and hogs. At one time he had some sheep there.

Q. How many horses has he had in there since 1872 or 1873?

A. Well, we had among us, my father and younger brothers and I, I suppose, on an average all the time, from one hundred to one hundred and twenty-five head.

167 Q. What would be the average of cattle that your father had in there, betwe-n the same dates, 1872 and 1883?

A. Not to exceed two hundred, I would think; that is on an average. Sometimes he might have more than that, other times not so many, as he was always trading in cattle. Sometimes he would have five hundred head in there.

Q. How often would he make purchases of cattle?

A. He traded in cattle all the time. He would buy cattle whenever he could get a chance or a good trade for them.

Q. When he would buy a small bunch of cattle what would he do with them?

A. Brand them and turn them loose in the cañons there.

Q. Where did these cattle stay, with respect to the land described to you awhile ago?

A. You mean my father's cattle?

Q. Yes, sir.

A. They staid in these several cañons there, within the boundaries described. A few of them would get out over into other cañons, and I would always drive them back, as well as my own, whenever I would find any of them.

Q. What other cattlemen were there that owned cattle around in that vicinity, within a radius of ten or fifteen miles?

A. The two Curtis boys, my grandfather—no, not in 1872; they were not there, I don't think.

Q. Take the year 1872 and 1873, what other cattlemen were there around there, if any?

A. The first cattle that was in the Caliente was the cattle of my grandfather, and the Curtis boys. I don't know what year it was exactly, but it was within a year or two of that date.

Q. Where did they herd them?

168 A. On the Caliente and tributaries of the Caliente; little side cañons that come in and run out some two or three miles.

Q. Did these cattle get down onto this property?

A. Very few of them. Above grandfather's and the Curtis boys, in a few years after they went there—three or four years, I think it was—the Hunt boys came in from Red river and took up a ranch about three miles above my grandfather's place. Above him was a man named Wolf, who took up a ranch above and run his cattle in the Caliente creek; and up to about 1879 or 1880 our cattle never mixed, to speak of. Of course, scattering ones would get over into the other parties' ranches. We could ride out there most any day, when it was a bright day, and see all our cattle.

Q. And that was so up to what time?

A. About 1879.

Q. How was it after that, Mr. Dawson?

A. The cattle increased, and some of us got hold of more by buying, and there were more cattle on the ranges, and filled up the country, until the herds were pretty well scattered all over the country; and they would mix in the winter time, more or less, and in the summer time we would start out with a pack-horse, and take our blankets and grub and the pack-horse and make a little gathering, or round-up, probably three or four men of us, and gather our cattle back to the home ranges.

Q. What was the character of the range, say up to 1880?

A. The grass was very fine in these cañons. You could cut hay most anywhere in the cañons. I remember my grandfather's borrowing my father's machine and cutting the grass.

Mr. CATRON: I object to his testifying about cutting grass.

169 Objection overruled by the court.

Exception reserved by plaintiff's counsel.

Q Go on and tell all about the cutting of the grass.

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. I said he had cut grass on the Caliente. If you will let me go on, I will say that the grass was that way all over the country; all over the heads of those cañons.

Q. Did the character of the range have anything to do with the drifting of the cattle?

A. Yes, sir, it had everything to do. The cattle would not drift off; had no occasion to go any place after they were once located, up to that time, because they had plenty of feed anywhere in the hills.

Q. How was Coal cañon managed; in what way was that used?

A. It was used by my father's stock; I never had any stock in it.

Q. What kind of stock did he have over there?

A. He had some cattle and horses.

Q. Now, with reference to that cañon, were the cattle of other people coming into that cañon?

A. I never noticed but a few; I always drove them out when I was up there. There was nobody else's cattle there except Pat. Lyons'.

Q. Do you know how Pat. Lyons managed his cattle?

A. He turned them into the Van Bremmer; run his cattle on a space of country about five or six miles long, up and down the Van Bremmer. I think, some time in the seventies, the Woodburn boys had a bunch of cattle just below him, for one or two years; and then they drove them out onto the prairie; they took their cattle from the Van Bremmer to the Rito plains.

170 Q. As between that Coal cañon and Lyon, was there any recognized boundary between those ranges?

A. Yes, sir; the dividing ridge between New cañon and Coal cañon.

Q. Was there anybody else over in that section of the country that could have interfered with your father, except Lyons; that could have interfered with your father in the possession of Coal cañon, or that had any cattle that would likely interfere with him?

A. Up to 1880, no one, except the Woodburns I spoke of.

Q. How far was their range from Coal cañon?

A. Well, they had one ranch about a mile below where Pat. Lyons lived, and another one about a mile or two below that.

Q. And that was about how far from Coal cañon?

A. You mean from the divide of the Coal cañon down to their ranch?

Q. Yes, sir.

A. Four or five miles.

Q. Did they have many cattle?

A. I think they had two or three hundred; something like that.

Q. Did these cattle ever get over into Coal cañon?

A. I never saw any of them.

Q. Were you around in Coal cañon any?

A. I was there, but not so much as I was on the other side, in the summer time. In the winter time I went to school.

Q. How was the range over on the Van Bremmer?

A. It was good; always good in the cañons up until the dry year, which was in 1880. We never had any trouble with grass or cattle up to that year.

Q. Did your father have any hogs?

A. Yes, sir.

Q. How many hogs has he had on an average since 1872?

171 A. Well, I could not give an average, but he has had all the way from twenty to two hundred and fifty, at different times.

Q. Where were these hogs kept principally?

A. They were kept at the ranch and out in these cañons. My father would frequently in the spring haul out all the shoats and young hogs into the mountains, up Rail cañon, and in the Saltpeter there, unload them, have a herder with them four or five days, until they got located, and let them run there until fall, and then they would be killed.

Q. What was there up there for the hogs to eat?

A. There was grass and acorns and piñons.

Q. In what quantity?

A. Grass grew all over these mountains and hills and valleys, and the oak brush grows all over the hills, and the piñons from one to twenty acres.

Q. What is the general character of this tract of land?

A. It is mountains and valleys, and bluffs and little breaks; rincons spread out all through the tract.

Q. Any soil on these lands; on the hills, for instance?

A. Yes, sir; the soil is good all over the hills. It is kept up and made rich by the leaves.

Q. What is the nature of the ground there, as to its fertility?

A. The land over these mountains is fertile, because it is added to every year by the decay of the leaves.

Q. What quantity of that fertile land is there?

A. The biggest part of it is fertile land. Wherever there is any soil it is fertile. Of course, where there is an abrupt bluff or rocky place where there is no dirt on it, is not fertile.

Q. Did your father ever raise any crops up there without irrigation?

172 A. There on the place near by home; not out on the place.

Q. Do you know of any other crops being raised around in that country there without irrigation?

Objected to.

Objection sustained.

Q. Do you know who has claimed to own this tract of land since that time?

A. Yes, sir.

Q. Who?

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved.

A. My father.
Q. Have you ever talked with the neighbors around there as to the boundaries of your father's claim?
A. I have always told them we claimed all the drainage of the Vermejo.

Mr. CATRON: We object to the answer as not responsive, and ask that it be stricken out.
The COURT: That answer may be stricken out.

Q. I will ask you whether you have ever talked with other people there, and told them what your father claimed?

Objected to by plaintiff's counsel.
Objection overruled.
Objection reserved.

A. Yes, sir.
Q. What did you tell them?

Objected to by plaintiff's counsel.
Exception overruled.
Exception reserved by plaintiff's counsel.

A. I told them that my father claimed all the drainage of the Vermejo river that was above his lower line, and the heads of the cañons—all the drainage above his lower line that come in on the property of the Horseshoe property, including his own place.
173 Q. Up to what point on the river?
A. Up to the dam.

Mr. CATRON: I ask to strike out these last answers as being improper and immaterial.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

Q. How many of the people around over that country did you ever talk to about the boundaries of this land?
A. I don't know how many. I have always told the men who were working for us—told all the cowmen I worked with—that my father owned and claimed that country.
Q. What country did you tell them that your father claimed—were the boundaries designated in any way?
A. Yes, sir.
Q. In what way?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. By the dividing ridges that run around on the outside of his property; his line run round the top of the ridge where the water sheded one way and the other. On top of this ridge, between Doak

cañon and Rail cañon on the west, between Stout cañon on the west and Five Dollar cañon on the west. Dead Horse cañon on the west, up to the head of Saltpeter—that is the line right on top of the ridge where the water runs to the west and to the east; then the line runs in a south direction from that point right on top of the ridge—the ridge that is between Crow creek on the east and the tributaries of Saltpeter on the west—to the head of Prairie Crow; and from there it runs on the ridge between Prairie Crow and the breaks of Saltpeter to the head of Dick Curtis cañon. From there it runs down the ridge between the breaks of Dick Curtis cañon and
174 the breaks of Saltpeter cañon to the line that crosses on the line with Rock cañon; that runs in about a southwesterly direction from the top of the ridge on Saltpeter to the top of the ridge on the west side of Lacey cañon, across the Vermejo; and the line turns in a northerly direction there, running on top of the ridge between Van Bremmer and Lacey cañon until it comes to the head of Lacey cañon; then from there it follows the divide.

Mr. CATRON: I object to this long statement the witness is making, on the ground that it is not responsive to the question, and ask that the question be repeated again to the witness.

Q. (repeated). What country did you tell them that your father claimed—were the boundaries designated in any way?

Mr. JONES, to witness: Is that the way you talked to the other people about the boundaries?

A. I told them that the drainage of this property—that the drainage of the Vermejo between the dam and the lower end of the O'Donnell farm—belonged to my father; from the rock-fence line up. That is the way I described it to the people.

Mr. CATRON: I will ask the court to strike out that long talk the witness made. I ask that that long description be stricken out, and that nothing go to the jury except what he says he gave to the people. Of course I object to that going to the jury, also, and except.

The COURT, to jury: Gentlemen, that long description just given by witness is stricken out.

Q. Is there anything upon the surface of the earth there to indicate where the drainage is about which you spoke?

A. Yes, sir; a well-defined line.

Q. State what these points are on the earth's surface for defining the boundary of that drainage.

175 A. It is the top of the ridge where the water runs from the one way, draining into the property; and the water that runs out, drains off the property.

Q. Is that word drainage a word in common use in that country up there?

A. It is in that neighborhood.

Q. Could a person go and find the boundary of the land by simply telling them it was the drainage between certain points?

A. Any man could.

Q. State whether or not you assisted in making a survey of that land.

A. Yes, sir, I did.

Q. Where did that survey run?

A. It run according to that description that you read me there.

Mr. CATRON: I object to the answer, on the ground that it is a mere opinion of the witness.

Objection overruled.

Exception reserved by plaintiff's counsel.

Q. What line was surveyed there? State from your own knowledge.

A. I started to describe that awhile ago.

Q. You can describe that now.

Mr. CATRON: I object. If a survey was made I suggest that this witness is not the best witness.

The COURT: Were notes of the survey taken by the surveyor?

A. Yes, sir.

The COURT: You had better put the surveyor on the stand.

Objection sustained.

Q. I will ask you whether there is anything on the earth's surface to indicate the drainage on the earth's surface?

A. Yes, sir.

176 Q. Now, I will ask you what there is there? Describe these ridges, and take in the whole tract; take in what there is all around it to indicate the boundaries of that drainage.

Objected to by plaintiff's counsel.

Objection overruled.

Exception reserved.

A. To begin, I would begin at the point described in Mr. Jones' description there. The dam mentioned has been there ever since I can remember, and so has the point of rocks. Now, from the point of rocks to the head of Saltpeter cañon there is a well-defined ridge, from which the water that falls is divided; water that falls on one side of the line runs into the Saltpeter and Rail cañons and their tributaries. The water that falls and runs into Saltpeter and Rail cañons runs one way, and the water that falls on the cañons I mentioned before, which was Doak cañon and Stout cañon and Five Dollar cañon and Dead Horse cañon, runs into the Vermejo above this dam. From there the line turns south, or in a southerly direction, and runs along the ridge, on top of the ridge, where the water runs into Saltpeter, and the water drains into Crow creek down to the head of Prairie Crow, and from the head of Prairie Crow it follows the divide, between Prairie Crow and the breaks, or tributaries of Saltpeter.

Q. Is that Prairie Crow cañon?

A. Yes, sir; to the head of Dick Curtis cañon. From the head of Dick Curtis cañon it follows the divide between Dick Curtis cañon and the breaks or tributaries of Saltpeter, to where it intersects this

line with the rock fence; that line runs across Saltpeter and its tributaries and Spring cañon and Vermejo and the Lacey cañon to the top of the divide, between Van Bremmer cañon and the Lacey cañon. There it follows the divide to the head of Lacey cañon, and from there it follows the divide, between Coal cañon and the
177 tributaries of Van Bremmer cañon, to New cañon; and from New cañon it follows the divide, between New cañon and the head of Coal cañon, to the extreme head of Coal cañon; then it turns south again, the line does, and follows the ridge, between Stag cañon and Coal cañon, down to the mouth of Stag cañon; and from there it follows the ridge, between the tributaries of Coal cañon and the tributaries of the Vermejo, to this point on the top of the ridge; and from there to the dam. The line is all well-defined by piles of rocks and blazed trees, all the way around it.

Q. How is the line defined, other than by piles of rocks and blazed trees? Are these ridges prominent?

A. Yes, sir; very prominent.

Q. Are these ridges known in that neighborhood?

A. Every one that is familiar with the country knows them. All the cowmen that have ever worked through that country know these ridges.

Q. What improvements has your father made on that land?

A. He has built houses, made ditches, planted trees, farmed the land. He has built fences, made rails, and so on.

Q. I will ask you how many rails he made on that land.

A. I don't know exactly how many. I know where they were made, and about the time; in the head of Rail cañon.

Q. Has the making of those rails anything to do with the name of the cañon?

A. That is what the cañon took its name from.

Q. When were these rails made?

A. Must have been in the first years of the seventies.

Q. Do you know how many rails were made, more or less?

178 A. No, sir; I think something like seven or eight thousand. I know the stumps are there still, and there was a good deal of timber cut for rails, and there never was any other timber cut up there for any other purpose. They were large pine trees cut.

Q. What was done with these rails?

A. They were hauled down near my father's house, and fences built with them.

Q. How much fencing has been done on the place?

A. You mean all the fencing that has been done by my father?

Q. Yes, sir.

A. I guess there is forty miles of fence.

Q. In what portions of this land are these fences?

A. There is one pasture at the head of Rail cañon, one in the middle of Rail cañon, and one, what we call the lower pasture, down next to the house. They are all connected; that is, there is a division fence between the three pastures; and then there is a fence across the upper line, which connects the northwest corner of the lower pasture and runs down to the dam; and there is another

fence runs up from the dam, on the west side, to the top of the mountain, and runs across Coal cañon, about one-half way up it, and crosses Coal cañon up onto the divide on the top of Coal cañon, and down into Lacey cañon for quite a little distance, and connects with a bluff, and then this bluff runs round to the point which is right opposite of where the rock fence crosses; and there is a wire fence from that point down to the end of the rock fence and connects with the rock fence. Then there is a fence commencing at the east end of the rock fence, and running up on top of the ridge and connects with the bluff of the Spring cañon; then there is a gap in there of about two miles that there is no connection between the two fences more than bluffs. Then there is cross-fences all through that place.

Q. How much cultivated land is there there?

A. About three hundred acres, I guess.

179 Q. State how much valley land there is on the east side of the river?

A. From the river to what we call bottom land there is not more than one hundred yards of it; then there is a kind of a bench, or raise, of ten or fifteen feet, and it runs back three or four hundred yards.

Q. Is that land cultivated?

A. Yes, sir.

Q. What is the character of the land, as it leaves that valley and goes out on the east side of the river?

A. Well, after you get to the foot-hills, there is some places that it runs up pretty steep, and there is a number of places where you can drive a wagon up. On the east side there is two different trails you can ride up easily horseback clear to the top of the divide, and there is a number of benches around there that we drive up on for wood, on the east side, near the mouth of Rail cañon.

Q. How does Rail cañon open out there into the valley?

A. It opens out quite wide for a distance of nearly a half a mile. I would think it was three hundred yards wide at the mouth and gradually closes up.

Q. What is the character of Rail cañon as you go on up the cañon?

A. After you get up two or three miles it opens out again and the hills are very low, not more than fifty feet high.

Q. How are these hills on top, with reference to their surface?

A. Well, they are not so very steep; just a kind of a slope.

Q. How is Saltpeter cañon?

A. The head of Saltpeter cañon is much like that of Rail cañon.

Q. Describe Coal cañon.

A. At the mouth of it it is two or three hundred yards
180 wide, and runs up to a V-shaped point, extending up one-half a mile. There it closes up for a distance of two or three miles, and from there on up to the head of it there is open, woody cañons and low hills, very much like Rail cañon.

Q. How many brothers have you?

A. Three living.

Q. What are their ages now?

A. I think the next brother to me, Si, is twenty-two years old, and Bruce is about twenty years old. Manly, the youngest, is about seventeen or eighteen years old.

Q. Where were they born?

A. All born on that place.

Q. What kind of work have they been doing there on the place, if any?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. They never done any farming—none of us ever did; we just looked after the stock. I never worked on the farm.

Q. How long has your oldest brother been working with stock on the range?

A. Ever since he has been big enough to ride. I guess he was riding when he was five years old.

Q. Is that true of the other boys?

A. Yes, sir.

Q. They were working with stock where?

A. There at the home place. I don't think either of them ever went on the round-ups much, only until late years.

Q. On what parts of the place?

A. In these same cañons I spoke of having my stock running.

Q. For how long have they been doing that?

A. Ever since they were five or six years old, when they
181 were not at school. Generally be there in the summer-time, and be away in the winter at school.

Q. Did anybody except your father ever undertake to build any fence on there, until within recent years?

A. No, sir.

Q. Who was the first person that ever built any fences on there except your father?

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved by plaintiff's counsel.

A. The Maxwell Land Grant Company.

Q. When did the Maxwell Land Grant Company undertake to fence any of it?

A. In 1889 they built what they called a beef pasture.

Q. State the extent of the fence they built there.

A. They built a fence from about half way from the head of Saltpeter, commencing about one-half way between the head of Saltpeter and where my father's line runs now on Saltpeter, and built a fence up to the head of Saltpeter; and then turned across and followed the divide about half a mile; and then left that ridge and got over into the head of Dead Horse cañon and Five Dollar cañon.

Q. Since 1889—since that fence was built—has your father had any stock in the head of these cañons?

A. Yes, sir, up to the present time. When I left there we had stock there.

Q. You stated you had some stock there. Did your brothers have any cattle, too?

Objected to by plaintiff's counsel as immaterial.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. Yes, my brothers had little bunches of cattle that they run there, with father's permission, the same as I did.

182 Mr. CATRON: I object to that answer, and move that it be stricken out.

The COURT: That answer is stricken out, except the word "yes."

Q. Where did they run their cattle?
A. In the same place with mine.
Q. Do you know by what authority they run them there?

Objected to by Mr. Catron.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. Yes, sir.
Q. By what authority?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. Permission from my father.
Q. What became of these cattle you and your brothers owned?

Objected to as immaterial.
Objection overruled.
Exception reserved by plaintiff's counsel.

A. We sold them to the Maxwell Land Grant Company in 1888.

Q. What was done with them after the Maxwell Land Grant Company bought them?

A. We gathered them up and drove them to June Hunt's old ranch, on the Caliente, and delivered them to the company, and they turned them loose there.

Q. What business have you been engaged in since that time?
A. In the sheep business.
Q. Your sheep were not kept on this land, were they?
A. No, sir; I have a sheep ranch about twenty-five miles east of this place.

183 Q. Did your father sell any of his cattle along about that time you sold yours?

A. He sold all the cattle he had, except some steers.

Q. Where were the cattle at the time he sold them; his cattle?

A. They were scattered over the ranges there. He had a herd of cattle he bought on the Caliente.

The COURT: Where were the cattle at the time he sold them? Were they on this land in controversy?

A. Some of them were and some were not.

Q. To whom were they sold?

A. The Maxwell Land Grant Company.

Q. Do you remember when they were sold?

A. He sold two different bunches of cattle.

Q. When was the first bunch sold?

A. I think it was in the spring of 1887 or 1888; I am not sure whether it was 1887 or 1888.

Q. What became of these cattle that were running on your father's land after he sold them to the Maxwell Land Grant Company?

A. That first bunch, do you mean?

Q. Yes, sir.

A. The Maxwell Land Grant Company, after buying them, brought the "Crocker" outfit to work in there, and rounded them up and drove them to Van Bremmer, and branded the calves and turned them loose there.

Cross-examination by Mr. T. B. CATRON:

Q. The Maxwell Company had branding corrals in Van Bremmer, didn't they?

A. Yes, sir.

Q. They took them over to those corrals and branded them at the corrals, didn't they?

A. No, sir; they branded them outside.

Q. Where?

A. Just below Pat. Lyons' place.

184 Q. Do you say that they didn't take any in the corrals to brand them?

A. I said they branded the calves at that time—the long H outfit and all the other outfits—outside of the corral.

Q. Did they brand any of the other cattle?

A. They branded the grown cattle in the corral, where they were delivered to them, but this brand of cattle was not branded; they bought the brand range delivery.

Q. How far did they brand them from Coal cañon?

A. About seven miles.

Q. And many of these cattle went back into Coal cañon, didn't they?

A. Very few of them.

Q. These cattle that came from Coal cañon had lately been brought up from Texas, hadn't they?

A. They were a Texas herd of cattle; yes, sir.

Q. They had lately been brought up from Texas?

A. The year before, I think it was.

Q. How about the cattle your father had been running previous to that—the other cattle—were they sold?

A. Yes, sir; all but a few milk cows that were reserved.

Q. Those were running in Rail cañon and Saltpeter cañon, weren't they—the bunch of cattle he had, all along?

A. Some of them were running in there and some were not. Some were running outside at that time. At that time we worked the cattle all together.

Q. Where were they running outside?

A. On the Caliente ranges.

Q. And farther east, I suppose, over towards Crow Creek country?

A. Yes, sir.

185 Q. And ranged down the Saltpeter and Spring cañon, didn't they?

A. There was not many of the Croker outfit's cattle below the heads of Saltpeter and Rail cañons. The most of my cattle, after we run them together, were in that country; and that was the biggest brand there—that was the biggest brand of cattle run in there after we run our cattle together.

Q. What was the Croker outfit?

A. Well, it was a pool outfit of cattlemen.

Q. Your father was a member of that, was he?

A. After he bought my grandfather's cattle, he was.

Q. What year did he do that?

A. About 1884 or 1885.

Q. Where did you go to school?

A. I went to school in Denver, Kentucky, and Lawrence, Kansas.

Q. What year did you go to Denver?

A. In 1888.

Q. How long did you remain there?

A. I went part of one winter; I would think, six or seven months. I left before school was out, in the spring.

Q. What year did you go to Kentucky to school?

A. In 1879.

Q. How long did you stay there?

A. I stayed there till the 15th of April, 1880, and then came home.

Q. In Lawrence, Kansas—when did you go there?

A. In the fall of 1880 I went to Kentucky—went to school there until 1881.

Q. So you were in Kentucky during part of two years?

A. Yes, sir.

Q. You remained in Kentucky how many months each time?

186 A. Well, I am pretty sure as to the time I went, because we always "bear-hunt" in September; and I waited until after "bear-hunt" and then went to school; and I always come back to get my horses ready by the 15th or 20th of April—to get my horses ready for the round-up.

Q. Then you were gone six or seven months?

A. From October until the 15th of April.

Q. When did you go to Lawrence to school?

A. I don't know whether it was the year following I was at Kentucky, or whether I skipped a year.

Q. How long were you at Lawrence?

A. Three or four months. I went to a business college there.

Q. How long were you cattle inspector at Kansas City?

A. From July, 1885, until January, 1886; and then from July, 1886, until the 1st of January, 1887.

Q. One-half year each time?

A. Yes, sir.

Q. Did you attend school before you went to Denver or Kentucky, anywhere in the Territory, or any other place?

A. The first school I remember going to was up here at La Junta, on the Mora river. I am pretty sure of the date. It was the year after we came back from a cattle drive, when I went with my father, in 1871. I think it must have been in the fall of 1871 or spring of 1872.

Q. How long were you at that school?

A. Two or three months.

Q. Where were you in the year 1870?

A. I have no other recollection, only being at home.

Q. Is there anything you remember particularly in the year 1870?

187 A. I believe I went to Texas or come from Texas that year. It might have been the year before.

Q. You think it was in 1870 you went to Texas?

A. Yes, sir; it might have been in 1869.

Q. Is it your best recollection, it was in 1870 you went to Texas?

A. I don't recollect whether it was 1869 or 1870.

Q. You drove north the next year; where did you drive to?

A. We drove north in 1871; to Green River, Utah, I think it was.

Q. Does Saltpeter cañon open out or empty into the Vermejo river?

Q. Yes, sir.

Q. Does it empty in between that dam and that fence?

A. What fence?

Q. The fence that is the southern boundary of your father's claim.

A. No, sir.

Q. Where does it empty in, with reference to that fence which you claim to be the southern boundary?

A. About four miles below there.

Q. Does any of the water which drains into Saltpeter cañon empty into the Vermejo river between that fence and the dam?

A. No, sir.

Q. It all empties into the Vermejo four miles below, does it not?

A. Yes, sir.

Q. If you extend that fence in a straight line towards the east—that is, in the direction it is proceeding, eastward—it will cut Red river after while, will it not?

A. Yes, sir; if it would go far enough.

Q. Will it cut any other cañons further east than Saltpeter cañon?

A. It would cut several cañons there if you would go far enough.

188 Q. Mention them.

A. How far do you want to go?

Q. As far as you can go between that and Red river.

A. There would be Dick Curtis cañon, Crow creek, Prairie Crow, Willow arroyo, Cottonwood, Red river. Is that far enough?

Q. Let me ask you where Curtis cañon empties?

A. It runs into Crow creek, out on the prairie somewhere, about where the long H ranch is.

Q. Where does Crow creek empty?

A. Just below Eagle Tail, into Red river.

Q. And Red river and the Vermejo come together, don't they?

A. The Vermejo empties into Red river.

Q. They come together?

A. I say the Vermejo empties into Red river.

Q. I asked you the question whether the two didn't come together. Answer my question that way, yes or no.

A. I think I have answered your question. The Vermejo runs into Red river, and they come together, and it is called Red river below that.

Q. Commencing with the dam, on the north side of the Vermejo river, or the northeast side, and following down the river, would you anywhere cut Rail cañon, on the north side of the Vermejo river? Commencing with the dam and following down the Vermejo river on the north side of it, keeping the same distance from it that you started, and you start right at the dam, would you anywhere cut Rail cañon, coming down the Vermejo river?

A. The dam is in the river.

Q. I am aware of that. If you take the dam—that is, the end of the dam, on the north side of the river—which is at the

189 upper end of your father's claim, and follow down the river, on the north side, would you get out on the hills?

A. Staying the same distance from the river?

Q. Yes, following right down the river, say the same distance you started.

A. Yes, sir; you would get out.

Q. You would get out on the hills by following right down the river and keeping the same distance from the river you started from?

A. Yes, sir.

Q. How far would you start from the river?

A. About ten feet.

Q. Keeping ten feet from the river, as you come down it, would you get out on the hills before you got to the stone fence?

A. Up on the edge of the hills.

Q. Do these hills come up within ten feet of the river at any point?

A. At two points.

Q. Explain to me where these two points are with reference to the dam.

A. One of the points is about fifty yards, I judge, above the Maxwell Land Grant Company's head-gate.

Q. Head-gate of an acequia?
A. Of the Maxwell Land Grant Company's big ditch.
Q. And the other?
A. The other point is about two or three hundred yards below the dam.
Q. Would that line, following down the river as I have designated it, take in the head of Rail cañon or the head of Saltpeter cañon?
A. No, sir.
Q. You say there are about three hundred acres of land under cultivation there at that ranch?
A. To the best of my knowledge.
190 Q. About how much of it is in the bottom next to the river?
A. Most all of it.
Q. You spoke of some being on a "bench." How much is there?
A. About twenty acres.
Q. Is the entire width of that "bench" under cultivation?
A. Yes, sir.
Q. How long is that "bench" from north to south?
A. The distance is three or four hundred yards.
Q. What is the width of the valley on the side next to your father's house, right at your father's house; the widest part of the valley? What is the distance to the foot-hills?
A. From the river to the foot-hills it is about three hundred and fifty yards.
Q. Is there a "bench" on these foot-hills above there?
A. Yes, sir.
Q. How wide is that "bench"?
A. A couple of hundred yards wide.
Q. Does that take you to the mountain?
A. No, sir; then you cross Coal cañon.
Q. Well, then, how far do you go to get to the mountain—to the foot of the mountain?
A. In a westerly direction from the house?
Q. Yes, sir; straight west.
A. We call it between a quarter and a half a mile from the house to the mountain.
Q. In what month of the year were you born?
A. In December.
Q. 1862?
A. Yes, sir.
Q. When was it you went to Vermejo to live, where your father lives now?
191 A. In 1868.
Q. What month of the year did you go there in?
A. I remember it was in the summer time when we went there.
Q. You were not quite six years old then?
A. No, sir.

Q. You stated your father ranged some sheep at this place; which year was that?

A. It was while he and Chase were in the sheep business together; I don't know what year it was.

Q. Was it while you were very young?

A. It was in the seventies some time. It was some time from 1875 to 1882.

Q. How many years did he run sheep there?

A. He never run them for a year; he had a bunch there for one winter.

Q. It is a custom in that section of the country, is it not, or was it not, for people to have their ranges separate from each other, and for the people to respect each other's range, up to 1879 and 1880?

A. Yes, sir.

Q. After 1879 and 1880 the cattle, having increased, and grass having become less in quantity, after that you commenced rounding up your cattle?

A. Well, the general big round-ups—the way they work cattle now—was not in vogue until after 1883 or 1884.

Q. But cattlemen established a round-up of their own, amongst themselves, on account of the scarcity of grass and the increase of cattle?

A. Yes, sir.

Q. Then the cattle, after 1879, ran more extensively all over the country than they had previous to that?

192 A. A little more, say, but not to speak of; not so much as they did in 1883 and 1884.

Q. But it was sufficient to require you to make some kind of a round-up, so as to get them together once or twice a year, was it not—and separate them from each other?

A. Yes, sir; drive our cattle home to our ranges.

Q. You spoke about having some sheep. Now where did those sheep range?

A. In Colfax county.

Q. Can't tell me whereabouts, with reference to that grant property, the title to which has been introduced in evidence?

A. On the eastern side of the grant, east of the grant, out as far as twenty miles east of the east grant line.

Q. Entirely off of the grant?

A. No, sir.

Q. On the grant partly?

A. Some of them are, at times.

Q. Do you claim the land where those sheep graze on the grant?

A. We bought some from the grant over there, we claim that.

Q. Do they range on any part of the grant you haven't bought?

A. Sometimes we have herds in there at different seasons of the year shearing and lambing.

Q. Do you claim those lands?

A. No, sir. We got permission to do that from Mr. Whigham.

Q. Where did Mr. Dawson range the sheep he had one winter on this property that you spoke about?

A. Between Van Bremmer and the Ponil, on the prairie.

Q. How long did he pasture them there?

A. Four or five years, I think.

193 Q. Did he claim that land?

A. No, sir.

Q. When did your father get his first hogs?

A. I can't remember back to the time; hogs run there ever since I can remember.

Q. About how many of these sheep was there that you ranged in between the Van Bremmer and Ponil—not you, but your father and Mr. Chase?

A. They commenced there with about three thousand head.

Q. And ended with how many?

A. I don't know how many there was. They increased the herd.

Q. They reached to about twenty thousand before they quit, didn't they?

A. Not there, they moved them down in San Miguel county. I think they had about twenty thousand when they were in San Miguel county; they were there one or two years.

Q. Just before they went to San Miguel county they had from ten to fifteen thousand, didn't they?

A. May have had ten thousand head, I am not positive.

Q. How many cattle had your father at the property in question in 1872?

A. I don't know.

Q. How many had he in 1873?

A. I don't know how many he had.

Q. How many horses had he in these years at these places?

A. My best recollection would be thirty or forty head.

Q. How many hogs had he in either one of these two years, 1872 or 1873?

A. I don't know how many.

Q. How many cattle had your father in 1876 at that property?

194 A. Might have had two hundred, three hundred or five hundred, at times; sometimes he would sell some of them.

Q. He might have had fifty, one hundred or one hundred and fifty, too, might he not?

A. No, sir; I don't think there was ever any time a bunch as small as fifty head of cattle on the place.

Q. Was it as small as a hundred at any time?

A. No, sir; I don't think it was.

Q. Was it as small as one hundred and fifty?

A. Well, it might have been.

Q. Did your father have any other cattle besides those that ranged on this property?

A. Yes, sir.

Q. Between 1874 say and the time he sold to the Maxwell Company?

A. I think in 1874 he had a bunch of cattle there.

Q. I mean besides those that were on this property.

A. Yes, sir; he had cattle in different places.

Q. Where were these cattle—in which county? Those he had that were not on this property, you say he had them in different places. I want to know in which county they were.

A. He had cattle in San Miguel county. He had cattle in Colfax county.

Q. How many more had he in Colfax county in the year 1874?

A. He had cattle in partnership with Mr. Chase in Colfax county. They had a herd of cattle there that was there about that time. I went over east there with Chase, and he put nine hundred head of cattle in with this bunch; I remember that. I don't know how many they had before that.

Q. What I want to get at is, had your father any cattle not
195 in connection with Chase, but his own individual cattle, besides what he ranged on this range that you have spoken of?

A. No, sir; not that I have any recollection of.

Q. All the other cattle he had he was in partnership with Chase in?

A. With different parties, not all with Chase.

Q. How many different parties had he cattle in partnership with in Colfax county?

A. Well, he had no party that owned cattle with him in Colfax county, that I remember of now. You are taking pretty large scope of time—from 1874 until he sold out. He owned an interest in the Red River pasture, which is in Colfax county, I think, or part of it, at least. He had cattle in the Cimarron pasture, in the county of San Miguel, in the Cimarron Cattle Company.

Q. Your father and Chase had quite a bunch of cattle somewhere in the Van Bremmer during some of those years, hadn't they?

A. Yes, sir; they had them there for a time; held them there.

Q. How long did they hold them there?

A. One summer.

Q. What other places did they hold them?

A. They held them for a short time in Carrizosa cañon.

Q. Was that on the Maxwell grant?

A. They held them about two or three weeks in the Carrizosa cañon.

Q. How long did they hold them on the Maxwell grant; do you know?

A. I don't know what year they bought them, but in 1880 these cattle you speak of were put into the Horseshoe pasture.

Q. Then, they had them four or five years before that?

A. No, sir.

196 Q. Didn't they have them in 1876?

A. No, sir.

Q. Didn't they have them in 1878?

A. I don't know; but I think they bought these cattle in 1879.

Q. You say you told various parties that your father claimed

land of the description which Mr. Jones read to you here. Did you tell them he had a deed of conveyance to that land?

A. Yes, sir.

Q. He claimed it under a deed of conveyance, did he?

A. Yes, sir.

Q. Have you ever seen that deed of conveyance?

A. I never saw it until about two or three years ago.

Q. But you have seen it?

A. Yes, sir.

Q. Who showed it to you?

A. My father.

Q. He told you that was the document under which he claimed this land, did he?

A. He told me that was the deed he got from Maxwell.

Q. He claimed that that deed was the deed that covered the land which he claimed, didn't he?

A. He told me that was the deed Maxwell gave him for that land that he bought there.

Q. He didn't pretend to you to claim any other land except what he bought from Maxwell, did he?

A. He claimed all that land that is described.

Q. Did he pretend to you that he claimed any other land except what he bought from Maxwell? Answer my question, yes or no.

The COURT: The question is, did he tell you that he claimed any land except what he bought from Maxwell.

197 A. Not that I have any recollection of.

Q. When he showed you that deed he showed it to you as being a deed for the land that he claimed, didn't he?

A. I think I asked to see the deed from mere curiosity.

Q. Then you asked him to show you deed of the land which he claimed, did you?

A. I asked him to show me the deed of his place.

Q. That was the place in question in this suit that you referred to, was it? And he showed you that deed as being the deed of it, did he?

A. Yes, sir.

Q. When was that survey made that you have referred to?

A. In March and April of this year.

Q. When were the monuments which you spoke of put up?

A. They were put up on this survey, some of them, and some were already up.

Q. Where was there any monument that was there which was not put up in this survey?

A. The dam and that point of rocks was there.

Q. Those were the only ones that were not put up on the survey?

A. That is all I remember of now.

Q. That point of rocks you speak of is the point of rocks on the right hand from the dam as you go up the river, is it not?

A. Yes, sir.
Q. How far is it from the dam?
A. Do you mean on an air line?
Q. Yes, sir, on an air line.
A. I don't remember the distance. I think it is about 1,000 or 1,500 feet.
Q. That is what is known as the right-hand point of rocks, is it, from the head of that ditch?
198 A. Yes, sir.
Q. You think it is about 1,000 or 1,500 feet?
A. Yes, sir.
Q. Drawing a straight line from that point of rocks to the eastern extremity of that fence which was built, can you say whether that line would strike the river or not—from this point of rocks, not from the dam.
A. From the point of rocks to the east end of the rock fence?
Q. Yes, sir.
A. I could not say whether it would or not.
Q. You have never sighted over that place?
A. No, sir.
Q. What was the old O'Donnell farm?
A. It is a farm below the old stage road.
Q. Does it reach up to that stone fence?
A. No, sir.
Q. You have spoken something about running down to the O'Donnell farm, in your testimony, if I understood you correctly; do you mean your father's ranch runs down to the O'Donnell farm, or only to this wall?
A. It runs down to the stone wall; my father's ranch does. I mentioned that to describe the drainage of the purchase from Maxwell.
Q. Where does Spring cañon empty out, with reference to that stone wall—above or below it? Where does it empty into the Vermejo, above or below that?
A. Below.
Q. How far below?
A. About a mile and a half.

Redirect examination by A. A. JONES:

Q. Running a line in the direction of that stone wall out
199 east, would it cross any cañons which empty into the Vermejo river, except Saltpeter cañon and Spring cañon?
A. No, sir.
Q. You spoke about your father having other cattle besides those he run on this place. State whether or not he ever had any other individual range for his cattle, except this.
A. No, sir; he had none.
Q. You said that the dam and point of rocks there were the only monuments that were already there. Do you mean to be understood as saying that those were the only things to indicate the boundaries of your father's land?

A. No, sir.

Q. How long has that stone wall been there?

A. It has been there a long time. I don't know when it was built.

Q. Running a line from that dam down to the east end of that stone wall, could you run a straight line there and keep on the north side of the river?

A. No, sir.

Testimony of George R. Denise.

GEORGE R. DENISE sworn.

Direct examination by A. A. JONES:

Q. What is your name?

A. George R. Denise.

Q. What is your occupation?

A. Civil engineer and surveyor.

Q. Are you acquainted with John B. Dawson, the defendant in this case?

A. Yes, sir.

Q. Do you know where he lives?

A. Yes, sir.

Q. State whether or not you ever made a survey of any lands for him.

200 A. Yes, sir.

Q. When was that?

A. I began the survey about the middle of March and ended in April of this year.

Q. What tract of land did you survey for him?

A. Do you want a description of it?

Q. Just a general description.

A. A tract of land that surrounds his present residence on the Vermejo river, in Colfax county.

Q. What land did he tell you to make a survey of?

A. All that land from which the water drained into the Vermejo river, between a certain dam at the upper end of his farm and a stone wall at the lower end; and also certain cañons, namely, Spring cañon, Saltpeter cañon and Lacey cañon; such parts of those cañons as lay above the line of the stone wall.

Q. All of these cañons drain into the Vermejo river, do they?

A. Yes, sir.

Q. State whether or not from that you were able to make a survey of this land.

A. I was.

Q. In finding the boundary of this drainage, were you able to find that?

A. Yes, sir; the line was plainly defined.

Q. Where did you start on your survey?

A. The point of beginning was an old dam at the upper end of his farm.

Q. And then where did you run?

A. Run to a high point of rocks that is north of the river, just about opposite the dam.

Q. I will ask you to read that description (referring to description in plea), and state what tract of land it describes. Do you know where that tract of land is?

A. Yes, sir.

Mr. JONES: I will ask the interpreter to read the description to the jury. I will state to the jury that this last part is more specific.

201 Mr. CATRON, to court: I object to the counsel testifying to the jury.

Mr. JONES, to interpreter: Read the whole description to the jury in the plea.

The interpreter here read to the jury the latter description in the plea.

Mr. CATRON: I object to the latter part of the description in the plea on the ground that it is a conclusion.

The COURT: The objection is sustained as to that part after the word "beginning."

Exception reserved by Mr. Jones.

Mr. JONES to witness:

Q. I will read you now another description:

"All the land in the valley or drainage of the Vermejo river, in the county of Colfax, Territory of New Mexico, within the following boundaries: Commencing at the dam on said river at the upper end of John B. Dawson's farm, thence running to a high point of rocks on the north side of Vermejo cañon, thence following along the top of the divide west of Rail cañon to the head of Saltpeter cañon, thence down along the top of the divide east of Saltpeter cañon to a point on a line with said John B. Dawson's rock fence, thence following the line of said rock fence across the Vermejo to the top of the divide, between the Vermejo and Van Bremmer cañons; thence following the top of said divide to the head of Coal cañon, and thence along the top of the divide east of Coal cañon to a point on said divide nearest the place of beginning, thence to the place of beginning." I will ask you if you know where that tract of land is?

A. Yes, sir, I do.

Q. Do you know where the other tract of land is, the description of which was read to the jury just now?

A. Yes, sir.

202 Q. State what connection these two descriptions have one with the other.

A. The land described is identical; the latter description is a little more in detail, is all.

Q. Does either of these descriptions describe land that is not within the drainage of the Vermejo river?

Objected to as a mere matter of conclusion.

Question withdrawn by Mr. Jones.

Q. In making that survey what line did you run?

A. I can tell you better by just giving you another description. Starting from the dam at the upper end of Dawson's place, thence going to a permanent point of rocks which was north of the river and on the point of the divide west of Rail cañon; thence following a line along the divide just west of Coal cañon, all the waters draining into Coal cañon, which drains into the Vermejo, follow that divide until you intersect with the divide which is north of Saltpeter cañon, which empties into the Vermejo river; thence following the divide, which is north and east of Saltpeter cañon, to a point where the extended line of Dawson's stone wall intersects that divide; thence following the line of that stone wall back over the Vermejo valley, across Lacey cañon, which empties into the Vermejo river, to a point on the divide which is east of Van Bremmer cañon; thence following that divide, which is east of Van Bremmer cañon, to a point where it intersects the divide which is west of Coal cañon; thence following the divide, which is north and east of Coal cañon, to a point where said Coal cañon empties into the Vermejo river, to a point which is nearest the point of beginning; thence to the point of beginning.

Q. What do you mean by "divide"?

A. The line of "divide" is the line which defines the water shed; the water running off each way, to the right and to the left.

203 Q. And from what Mr. Dawson told you, you were able to make this survey?

A. Yes, sir; from the general instructions.

Q. Running a line from the dam on this place to the east end of that rock wall, which side of the river would that line be on, if it was a straight line?

A. It would be on both sides; intersects about one-half way between the two points (referring to small map, Exhibit 4)

Q. Running a line from the dam to the west end of the stone wall, over what kind of a country would that line run, if it was a straight line?

A. That would be up over hillsides and divides; not divides so much; it would be up over steep side hills; I don't know whether it would run up over the top; I judge it would.

Q. Is that river straight or crooked between the dam and the stone wall?

A. It is crooked.

Cross-examination by Mr. T. B. CATRON:

Q. Does the Saltpeter cañon empty into the Vermejo river between the dam and the stone wall?

A. No, sir.

Q. Does any of the waters which drain into Saltpeter cañon from any place go into the Vermejo river between the dam and stone wall?

A. No, sir.

Q. Where do they go into the Vermejo river with reference to that stone wall?

A. Not quite four and a half miles below the stone wall.

Q. Is there any of the water which drains into Spring cañon run into the Vermejo river between the dam and stone wall?

A. No, sir.

Q. Where do they go into the Vermejo river?

204 A. They enter into the Vermejo about two miles below the stone wall.

Q. From the north end of the dam to the high point of rocks, what direction did you run?

Q. North thirty-six degrees east.

Q. And what distance?

A. About twenty-nine hundred feet.

Q. The rock is that far from the dam?

A. Yes, sir.

Q. From that point of rocks which direction did you run?

A. You just follow the divide.

Q. I want to know the direction.

A. Well, sir, I don't remember the courses.

Q. Did you make field-notes of your line?

A. Yes, sir.

Q. Have you got them here?

A. No, sir.

Q. Did you make a plat of that survey?

A. Yes, sir. I have it there (pointing to it).

Q. Where are your field-notes?

A. They are in the city; they are not in the court-room.

Q. Are they in your possession?

A. Yes, sir.

Q. Can you give any direction at all that you run there?

Q. Pardon me, but the line is made up of courses, and it is very hard to remember the courses. I happened to remember the course between the dam and point of rocks, but just what course it follows along the center of the divide until the divide swings a little, which is just a short distance, I don't remember.

Q. Can you give approximately the general course you run from that point of rocks?

A. It is angling to the left; runs more in a northerly direction.

205 Q. Could you take your plat and tell?

A. I could tell approximately what the course was, but then it is just a short distance until the ridge turns.

Q. Does that line that you run from the point of rocks run out in the same way the river runs, or was it in a different direction from the course of the river?

A. It inclines away from the river, going from the point of rocks.

Q. The river runs southeast at that point, does it not; that is approximately?

A. Yes, sir.

Q. And this line runs more north than it does east, does it not, from the point of rocks?

A. I don't know; I presume it does.

Mr. CATRON to the court: I shall ask this witness to go and get his field-notes. He is undertaking to testify from memory what he did, when he has the specific data.

Mr. JONES: I object to all this examination as improper cross-examination.

The COURT: Certainly you are entitled to the survey if you desire it. You can give your notice to produce the instrument if you wish and I will order him to produce it.

Q. Look at this map (referring to Exhibit —). Did you make that map?

A. Yes, sir.

Q. Can you tell from that map approximately what course you run from that high rock?

A. Well, the first general course was about north thirty-five east.

Q. That is the course from what point, the rock?

A. Yes, sir.

Q. Then from that about how did you run?

A. Well, it runs nearer north probably than any other way.

206 Q. Turn around and show the map to the jury. Point out to the jury where the Vermejo river is on the map.

A. Here is the Vermejo river.

Q. Now show at what point you commenced to run the survey.

A. Point of beginning at the dam.

Q. Now where is the rock?

A. This is the rock (indicating on map).

Q. Now that line is run up the river, is it not?

A. Well, yes; it follows up stream; there is a bend in the river here.

Q. How close is that big rock to the river; from the point on the river to the nearest points of rocks?

A. About six hundred feet.

Q. Now, from that point of rock, what general course did you run before you turned south?

A. The general course was probably about north, fifteen degrees east.

Q. It was more north than it was east?

A. Yes, sir.

Q. What course about does the river run? I don't mean across this property, but its general course.

A. The general course is northwest and southeast.

Q. Point out on that map the Saltpeter cañon.

A. That is Saltpeter cañon.

Q. Point out the place where Saltpeter cañon comes into the Vermejo river.

A. Right there (indicating).

Q. Point out Spring cañon on that map.

A. There it is.

Q. Where does it come into the Vermejo river?

A. There.

Q. Point out on the map the stone wall of Dawson's claim.

207 A. This is one end of it; this is the other.

Q. Point out the Lacey cañon.

A. That is Lacey cañon.

Q. Does it enter the Vermejo river above or below the stone wall?

A. Below.

Q. Point out Rail cañon on that map.

A. This is Rail cañon.

Q. About how much farther north is the head of Rail cañon than the point of the dam where you commenced?

A. I don't know.

Q. Can't you estimate it on that map? What is the scale of the map?

A. Two miles to the inch.

Q. Could you estimate it on that map about how much farther north it is?

A. I judge it was about four miles and a half; possibly a little more.

Q. Saltpeter cañon is still farther north, is it not?

A. You mean the head of it?

Q. Yes, sir. I asked you about the head of the other one, too.

A. Yes, sir.

Q. Now, where is Coal cañon? Point it out on the map.

A. That is Coal cañon.

Q. Is the head of Coal cañon north or south of that point of commencement at the dam?

A. North.

Q. About how much farther north is it than the point of commencement?

A. About three and a half miles.

Q. That red line indicates the shape of the tract of land which you run around, does it?

A. Yes, sir.

208 Q. About how wide, from east to west, is that tract of land on the southern line?

A. It must be about six miles and a half; that is, the lower line. Well, hardly that; probably it would run six miles.

Q. About what is the greatest distance of that tract of land from north to south?

A. You mean the general average to the north line?

Q. From the extreme northern point to that southern line.

A. It might run six and a half miles.

Q. How far is the extreme eastern part of that land from the Vermejo river?

A. Something over four miles.

Q. How far is the extreme western part of it from the Vermejo river?

A. Probably two miles.

Q. In making that survey (listen to this), did you anywhere begin at a point at a certain dam at the head of a certain ditch at the

right-hand point of rocks, and from thence running down the north side of the Vermejo river to a pile of rocks on a knoll, or elevation, where there were some bushes? Did you run such a line as that?

A. No, sir, I did not. That is a little indefinite. I did not follow it exactly. It is indefinite at the start and at the close.

Q. Did you run any line very nearly southward across the river?

A. From what point?

Q. Any point. Did you run a line nearly south?

A. Yes, sir, I did; I run a check line, in order to check my survey, to see that it was all right. I run a check line from the dam down to the stone wall.

Q. Did you run any line of that survey, that belonged to and marked that survey, nearly south?

209 A. Not any line that marked the boundary of the land, except the line across the Vermejo river, which line runs south fifty degrees west.

Q. Did you run to any point on the south or west side of that river to a piñon tree to the right of a ridge near a wash, the tree being marked with the letter "L"? (Reading from the deed.) Did you run to a place like that?

A. Not intentionally. We run close to some piñons, but not intentionally. I did not recognize any tree with the letter "L" on it.

Q. Did you find a wash there to the right of a ridge?

A. There are washes there to the right of ridges, but I did not make a particular point of any particular wash. That is all so very indefinite, you will have to pardon me, I don't know anything about it. It is very indefinite.

Q. Did you run from any point near a wash at the right of a ridge where there is a tree marked "L" up the river to the place where you commenced on the dam; any line from that point to the place where you commenced, in a straight line?

A. The point is very indefinite; I did not do so intentionally.

Q. Did you run any one of these boundary lines according to that? Did you run any line between a point near a wash at the right of a ridge, where there is a piñon tree marked "L," or the stump of a piñion tree, to a point where you commenced? Did you run any line as a boundary line between those points?

A. No, sir; I did not see any such points. I don't know anything about such a point. It is an indefinite point.

Q. Did you make any plat of your survey, besides the one you have here?

210 A. Yes, sir; I did. There is another one. It is simply a duplicate of this. It is simply a tracing of the Maxwell land grant, with this land inside of it.

Q. Not on as large a scale?

A. No, sir; it is simply a tracing of the Maxwell land grant, with this land inside of it.

Testimony of Taylor F. Maulding.

TAYLOR F. MAULDING sworn.

Direct examination by A. A. JONES:

Q. What is your name?
A. T. F. Maulding.
Q. Are you acquainted with John B. Dawson, the defendant in this case?
A. I am.
Q. How long have you known him?
A. I have known him since the summer of 1858.
Q. Where did you reside in 1868?
A. On the Vermejo river, in Colfax county.
Q. How long did you reside at that place?
A. I was there from the early part of 1868 until June, 1870.
Q. Do you know whether Mr. Dawson took possession of a piece of land there or not?

Objected to by plaintiff's counsel on the ground possession is a mere matter of opinion.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. Yes, sir; he did.
Q. State the circumstances under which he took that possession.

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

211 A. Well, we had bought a lot of land there together, four of us.

Mr. CATRON:

Q. Did you get a deed for that land?
A. Not at that time.

Mr. CATRON: I object to his stating what land he took, because the deed for his land is the best evidence.

WITNESS: This was a portion of this block of land, the particular portion that he went onto and settled in 1868.
Q. What was the description of the entire block of land?

Counsel for plaintiff objected to his stating the description — the entire block of land.

Mr. JONES, to court: The object of this testimony is this: I expect to show that they went into possesason of the land under a contract of purchase with Maxwell for the entire body of land, including this land in question, and more land; and that Maxwell put them in possession of this land, and after they were put into possession they were virtually tenants in common at this time under this contract; and after Maxwell put them in possession of

the tract described, the entire tract which he undertook to sell them, then they, themselves, divided up this tract in a certain way, each one taking exclusive possession of his particular part. We are not claiming here entirely under a deed, we are simply relying upon adverse possession, and the intentions are as much a part of the proof as any other thing; and if we can show that Mr. Dawson went upon the land and took possession of his land under these circumstances, being placed in possession by Maxwell himself, and that he afterwards paid his money for the land, whether he ever got a deed for it, that he had possession in good faith from that time on.

Objection overruled by the court.

Exception reserved by plaintiff's counsel.

212 Mr. CATRON to witness: Was there anything in writing about that land?

A. There was a kind of a bond for a deed. I don't know what it was exactly.

Mr. CATRON: I object to his testifying about it; that should tell for itself.

The COURT:

Q. At the time the possession was taken there was an instrument in writing made for some land?

A. Yes, sir.

Mr. JONES to court:

Q. I will lay the foundation for the introduction of that instrument.

Q. Who were the parties to that instrument?

A. Lucien B. Maxwell and Joel P. Curtis.

Q. Who kept that instrument after it was executed between these two parties?

A. Joel P. Curtis.

Q. State whether or not you made any effort to find that instrument after it was executed.

A. Yes, sir.

Q. State what effort was made.

A. Some time after Maxwell signed these deeds, I did not like the deeds and I went up then to see the bond, to get the bond from Curtis. We looked through his papers, a good many of them, but we could not find it.

Q. Where did Curtis keep his papers at that time?

Mr. CATRON: I object. Curtis is the best witness of that.

Q. Where did Curtis reside at that time?

A. On the Vermejo.

Q. Was his house there?

A. Yes, sir.

Q. Where did Curtis, if you know, keep his papers?

A. He kept them in his house.

Q. Any particular receptacle for them?
A. He kept them in a trunk at that time.
213 Q. Well, state what search was made there for this paper by you or in your presence?

Mr. CATRON: It is understood that I object to all this testimony, and except.

Q. Mr. Curtis went to this trunk where he kept his papers and got out a whole lot of papers, and we both looked over the papers, he and I together, but we did not find it.
Q. What, if anything, did Curtis say about the whereabouts of the paper?

Objected to by plaintiff's counsel.
Objection sustained by the court.

Q. Did he say anything about where the paper was kept?

Objected to by plaintiff's counsel.
Objection sustained by the court.

Q. Did you find this paper among the papers of Mr. Curtis?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved.

Q. I did not.
Q. Have you made any inquiries in regard to the paper since that time?
A. Yes, sir.
Q. State what inquiries you made.

Objected to by plaintiff's counsel.
Objection sustained.

Q. State what further search you made for the paper, if any.
A. After that I asked Curtis again if he ever found that paper.
Q. Did he find it?
A. No, sir.

Mr. CATRON: I move to strike out all the testimony of this witness, on the ground they have laid no foundation here to establish any lost instrument.
214 Motion sustained.
Exception reserved by Mr. Jones.

Q. State whether you ever had any conversation with L. B. Maxwell as to the possession of any tract of land on the Vermejo river.

Objected to by plaintiff's counsel.
Objection sustained.
Exception reserved by defendant's counsel.

Q. State whether or not L. B. Maxwell ever placed anybody in possession, or the defendant in this case in possession, of any tract of land on the Vermejo river.

Objected to by plaintiff's counsel.
Objection sustained.
Mr. JONES: We offer to show that Maxwell knew of the possession of the defendant, for the purpose of avoiding the necessity of proving as to the openness and notoriety of the possession.

Q. Was there ever any conversation with Maxwell as to the land occupied by Mr. Dawson?

Objected to by plaintiff's counsel.
Objection sustained.
Exception reserved by defendant's counsel.

Q. Did you ever have any conversation with L. B. Maxwell in regard to that tract of land occupied by Dawson?

Objected to.
Objection sustained.
Exception reserved by Mr. Jones.

Q. Where did Maxwell reside at that time?
A. At that time he was residing on the Cimarron, at the town of Cimarron.
Q. Did you ever visit this tract of land?
A. Yes, sir.
Q. Did you ever have any conversations with him as to what land Dawson claimed?

Objected to.
215 Objection sustained.
Exception reserved by plaintiff's counsel.

Q. Do you know what piece of land Dawson was occupying when Lucien B. Maxwell was around there?
A. Yes, sir.
Q. State what it was.
A. It was the upper tract of this purchase, or the upper part of this purchase that Maxwell made to us on the Vermejo river.

Mr. CATRON: I think I will move to strike out that last answer of the witness, because it implies a sale by Maxwell to them, and no legal proof has been brought here of any sale of land to them, at all.
The COURT: I think he can swear to the fact of a sale without the introduction of the instrument.
Exception reserved by plaintiff's counsel.

Mr. JONES to witness:

Q. I will read you this description:
"All the land in the valley or drainage of the Vermejo river, in the county of Colfax, Territory of New Mexico, within the following boundaries: Commencing at the dam on said river, at the upper end of John B. Dawson's farm, thence running to a high point of rocks on the north side of Vermejo cañon, thence following along the top of the divide west of Rail cañon to the head of Saltpeter

cañon, thence down along the top of the divide east of Saltpeter cañon to a point on a line with said John B. Dawson's rock fence, thence following the line of said rock fence across the Vermejo to the top of the divide, between the Vermejo and Van Bremmer cañons; thence following the top of said divide to the head of Coal cañon, and thence along the top of the divide east of Coal cañon to a point on said divide nearest the place of beginning, thence to the place of beginning." I will ask you if you know where that tract of land is?

A. Yes, sir.

216 Q. How long did you reside within the vicinity of this tract?

A. I was there from the spring of 1868 up to June, 1870. Then I returned there in the spring of 1878, and was there until about 1880.

Q. Who, if anybody, was occupying this tract of land at that time?

A. Mr. Dawson.

Q. Who, if any one, claimed to own the land at that time?

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved by plaintiff's counsel.

A. Mr. John B. Dawson.

Q. State whether or not you had any conversations with other people around there as to who claimed to own the tract of land.

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved.

A. Yes, sir; I talked with parties.

Q. State the names of some of those with whom you conversed.

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved by plaintiff's counsel.

A. I talked with Maxwell himself, and others, and a good many others; Stockton, and Abreu, and a good many more. I talked with a good many.

Q. When was this southern boundary line I read to you first established?

A. The line running parallel with the rock fence?

Q. Yes, sir.

A. I think that was in December, 1868.

Q. Who established that line?

A. Myself and Mr. Curtis.

217 Q. Who owned the land, at that time, immediately south of that line?

Objected to as immaterial.
Objection sustained.

Q. Who was in possession of the piece of land just south of the line at that time?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved.

A. Mr. De Graftenreid, I think, at that time.

Counsel for plaintiff moves to strike out the answer as being indefinite.
Motion overruled by the court.
Exception reserved by plaintiff's counsel.

Q. In what way did Dawson occupy that tract of land?
A. He lived on the property, and farmed there, and kept different kinds of stock.
Q. What kind of stock did he keep there?
A. He had cattle, horses and hogs.
Q. Over what portion of this tract did he have them?
A. He had them on this tract which you have just read the description of there.
Q. How long did he have them there, to your knowledge?
A. He has had them there from the spring of 1868 up to the present time.
Q. Did anybody else's stock run in there those years that you lived in that country, up to the time you first went away from there in 1870?
A. None that I know of.
Q. Did he cultivate any portion of that land?
A. Yes, sir.
Q. What is there, if anything, on the surface of the earth there to indicate these divides spoken about in this description?
218 A. There is timber, grass.
Q. This description speaks of "following along the top of the divide;" what is there on the surface of the earth to indicate where that divide is? What do you mean by divide?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. It is the drainage of the water. By its being a divide, I would say the water drained one way on one side and one way on the other side.
Q. Can the lines of those divides be traced upon these lands up there, Mr. Maulding?
A. I think so.

Counsel for plaintiff moves to strike out the answer as indefinite.
Motion overruled.
Exception reserved by plaintiff's counsel.

Q. State the circumstances under which this southern boundary line was established.

Objected to by plaintiff's counsel as immaterial.
Objection sustained.

Q. For what purpose was that boundary established; do you know?
A. Yes, sir.
Q. State for what purpose.
A. That line was established to show the possession between the different parties that had bought this block of land—the division line between them, right across the river.
Q. How far in each direction from the river was that line to extend?

Objected to.
Objection sustained.

Q. Was there any place known there as the O'Donnell farm?
A. Yes, sir.
219 Q. Well, where was what was known as the lower line of the O'Donnell farm? Can you point it out on this map?
A. There is the O'Donnell place, right there. That is what was termed the lower end of the O'Donnell improvements, right there (indicating on map).
Q. I will ask you if, in the early part of 1868, any person, or persons, took possession of this tract of land, including this, and down to this point here, and out to the divide on either side of the river?

Objected to by plaintiff's counsel as leading.
Objection overruled.
Exception reserved.

A. Yes, sir.

Mr. JONES: I am asking, gentlemen of the jury, as to this tract of land included within these lines, and also the lands below that down to this point (indicating on map), running out on either side of the river to the top of the divide.
Mr. JONES, to witness: Now, who, if any one, took possession of the whole tract of land in 1868, in the early part of the year?

Objected to.
Objection overruled.
Exception reserved.

A. Myself, Mr. Miller, Joel B. Curtis and John B. Dawson.
Q. Then, did you make any division of the possession of that land?
A. We run those lines across the creek, as far as the creek was concerned; those lines were intended to have reference to the creek.
Q. Was there anything to tell or indicate the division of the lands out from the creek?
A. No, sir.
Q. These lines established on the creek were to extend how far?

220 Objected to by plaintiff's counsel.
Objection sustained.

Q. When you divided up these lands between you, what land did Dawson take possession of?

A. He took possession of the upper tract.

Q. Designate on the plat the land he took possession of.

A. This is the tract Dawson took possession of; this inside this red border.

Q. What conversation, if any, did you have with your neighbors there in regard to the boundaries of the land that Mr. Dawson took possession of?

Objected to.
Objection overruled.
Exception reserved.

A. I talked with my neighbors, and we spoke of his upper tract. We often talked about this piece of land, and Dawson owning this piece of land, with its drainage.

Q. Name some of the parties you talked to—of your neighbors, or other persons in that vicinity.

A. I talked with R. D. Miller, and a man named Tony Maloche, and Jesus G. Abreu, G. E. Miller, Tom Stockton, and others I don't now remember.

Q. Did you talk with people that came down there to visit you about these holdings?

A. Yes, sir.

Q. Name some of those?

Objected to by plaintiff's counsel.
Objection sustained by the court.

Mr. JONES: I desire now to ask the witness the question, if he ever had any conversations with Lucien B. Maxwell in 1868 as to the land that Dawson was in possession of?

Objected to by plaintiff's counsel.
Objection sustained.

221 Q. While this defendant was in possession of this land in 1868, did Maxwell have actual knowledge of that possession?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved.

A. Yes, sir.

Q. Did he have knowledge as to the extent of the possession?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved.

Q. What lands did he know that Dawson was occupying at that time?

Objected to by plaintiff's counsel.

Objection sustained, on the ground witness has shown no knowledge on the subject.

WITNESS: The land above this line on both sides of the stream to the divide.

Q. What connection, if any, did the land referred to have with the land described in this paper that I read to you awhile ago?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved.

A. The same.

Q. How long did Mr. Maxwell live in that country after 1868?

A. I think he remained there until 1870; I would not be positive about that.

Q. Who were the cattle-owners in that vicinity from 1868 up until 1870?

A. Myself, Curtis, Miller and Dawson.

Q. Where did you keep your cattle?

Objected to by plaintiff's counsel.
Objection sustained.

222 Cross-examination by Mr. T. B. CATRON:

Q. How far did Maxwell live in 1868 from Dawson's ranch?

A. I think it was about twelve or thirteen miles.

Q. When was it that Maxwell first knew what land it was that Dawson was occupying?

A. I think it was May, 1868. It has been so long ago I can't give the dates exactly.

Q. Had Dawson moved to that place in May, 1868?

A. I think he took charge of the place along about that time.

Q. Don't you know he did not move there until the end of 1868?

A. Maybe we don't understand each other. If you have reference to the time he brought his family there, that was pretty late in the season; but at the time I spoke of he was unmarried and went up there.

Q. Where did Dick Miller live in 1868?

A. He lived on what was called the O'Donnell farm.

Q. You and Dick Miller, and Curtis, and Dawson were all in a kind of partnership, with reference to that land, at the start, were you not?

A. Yes, sir; we bought it all in bulk.

Q. You were all jointly interested in whatever you bought?

A. Yes, sir.

Q. Dick Miller was one of those parties, was he not?

A. Yes, sir.

Q. Was this man G. E. Miller one of them?

A. No, sir.

Q. Where did he live?

A. I think he was living on Red river.

Q. How far from the Vermejo, or Dawson's ranch?
A. About twenty-five miles.
223 Q. How far was Maxwell living, in 1868, from Dawson's ranch?
A. About twelve or fourteen miles, I think.
Q. At that time, to get from Cimarron to Dawson's ranch, did you have to go to the stage station and then go up the creek?
A. Not necessarily.
Q. Which was farthest, from Cimarron, Dawson's ranch or the stage station?
A. I think it was a little farther from Dawson's ranch.
Q. Where did Jesus G. Abreu live in 1868?
A. I think he lived over on the Rayado.
Q. How far is that from Dawson's ranch?
A. It must have been somewhere between twenty-five and thirty miles.
Q. Did you ever see Jesus G. Abreu up there at Dawson's ranch, up at that land or in that section of the country?
A. I have often seen him there at the station place.
Q. Coming along on the stage?
A. Yes, sir.
Q. You never saw him up at Dawson's ranch?
A. No, sir.
Q. He never was at that ranch, was he, that you know of, except at the stage station?
A. No, sir; I don't know it if he was.
Q. Ever see G. E. Miller there?
A. Yes, sir.
Q. Was he a relation of Dick Miller?
A. A brother.
Q. Saw him at Dick Miller's house, did you?
A. Yes, sir.
Q. Ever see Tom Stockton there?
A. Yes, sir.
Q. At what place did you see him?
224 A. I have seen him both at my place and Miller's.
Q. How many times?
A. A great many times.
Q. Was he passing through?
A. Sometimes he would come down and go back from there. Other times he would be passing through.
Q. Where did Tom Stockton live at that time?
A. Up on Red river, at the old Clifton place.
Q. How far from Dawson's ranch?
A. Thirty-five miles.
Q. Where did Tony Meloche live at that time?
A. He lived over on the Cimarron, I think, at that time.
Q. Do you pretend to state here what Dawson had on the ranch between 1870 and 1878 of your own knowledge?
A. Do I mean to state what stock he had there?
Q. Yes, or anything else.

A. Yes, sir.

Q. You have stated you left there in 1870 and did not come back until 1878, did you not?

A. I moved away from there, but I was back several times looking over the property. I was back there two or three times each year on the same property.

Q. Do you pretend to say that two or three times every year, between 1870 and 1878, you were back there?

A. Twice a year, I think, I averaged.

Q. Every single year?

A. Yes, sir.

Q. What were you doing back there?

A. Looking after my property there.

Q. In 1868 how many cattle did Dawson have on that ranch there?

A. I don't know the exact number.

Q. It was a very small number, was it not?

225 A. My recollection now is that he had about 200 head.

Q. His number of cattle varied from about 100 head up to 300, that he kept on that ranch, didn't they—they varied about those numbers?

A. I could not say exactly about the numbers he run. I think he started in there, the best I can recollect now, with three hundred head.

Q. How many horses did he start in with?

A. A small number at first.

Q. How many hogs did he start in with?

A. I could not tell you the number of hogs; all I know is, when I would go up there I would see hogs on the ranch; as to the number, I could not say.

Q. Did they exceed eight hogs at any one time?

A. I saw a great many more than that.

Q. See any hogs there in the year 1878?

A. Yes, sir.

Q. Did you see any there in 1882?

A. I would not be positive.

Q. See any hogs there since 1882?

A. Yes, sir.

Q. The hogs that were there belonged to Dawson, did they?

A. Yes, sir.

Q. Now, those cattle and horses and hogs ranged loose around there, did they?

A. Most of the time, I think, they were loose.

Q. Just went from place to place, as they wished?

A. During the crop season he kept them back up in the cañon.

Q. That was the principal herding that was done—herding them away from the crops, was it not?

A. I could not say. They were kept back in those cañons in different seasons.

Q. The animals you saw there, you saw running loose?

226 A. In his corrals and around his house, yes, sir.

Q. That is the way you saw them, was it?

A. Yes, sir.

Q. How much land has Dawson under cultivation there?

A. I don't know that I could give a very close estimate of it.

Q. Where is that land situated that is cultivated?

A. It is situated there on the Vermejo.

Q. In the valley of the river?

A. Well, a portion of it in what we call the low bottom and a portion of it on high ground, I suppose.

Q. Part on the mesas, or just on the bench?

A. I have reference to what he has cultivated around his house.

Q. How far is the farthest of that land which you have seen being cultivated by him, from the river?

A. I don't think it exceeds three-quarters of a mile.

Q. Do you think any of it exceeds three-quarters of a mile?

A. I think, maybe it would—some of it from a point on the river on a straight line; maybe not in some places. I think it would extend three-quarters of a mile in some places.

Q. Which side of the river does it extend farthest out from the river?

A. I don't think that there is a great deal of difference: the most of the farm lies on the south side of the river.

Q. How far is it at the widest point across the land between that dam to the fence? How far is the widest point from the foot-hill across that river, from foot-hill to foot-hill?

A. I could not tell you: I suppose it must be a mile or a
227 mile and a half; I would not be positive about that, because I never looked at it with a view of measuring it.

Q. How much improvements had Dawson on his land in the year 1878, when you moved back there?

A. I had a good house there, all the necessary outbuildings, stables and corrals; and his farm was fenced in, I think, a portion of it.

Q. What part of his farm was fenced in at that time?

A. There was a stone fence running across on the lower line of his land.

Q. Was that the only fence that there was?

A. I think he had an orchard fenced in up near his house.

Q. Was this cultivated land you have spoken about, fenced in?

A. I think it was, a portion of it.

Q. On which side of the river?

A. On the southwest side.

Q. How far did that fence extend out from the river—that is, in 1878?

A. Well, I suppose there was a portion of that fence that was one-half a mile or three-quarters of a mile from the river.

Q. What kind of a fence was it?

A. Some of it was a rail fence; some of it wire and some rock fence.

Q. Don't you know that no wire fencing came down into this country until after the railroad came?

A. I would not be positive, but what there was a little wire came

down before that time, but then I would not be positive about this fence business.

Q. What was the value of Dawson's residence?

Objected to by defendant's counsel.
Objection overruled.
Exception reserved by defendant's counsel.

228 A. I don't know whether he had built his big house, was living in his old house at the time.

Q. He was living in the new house in 1882, was he not?
A. I think he was.
Q. What was the value of it then?
A. I would think that house was worth $1,500.
Q. What was the value of all the improvements around there in the shape of buildings and outhouses, stables and corrals?
A. I would estimate them somewhere between $2,500 and $3,000.
Q. That is a mighty cheap estimate, is it not?
A. I don't know—they were good, substantial buildings.
Q. About how many acres of land had he cultivated there in 1882?
A. I suppose about one hundred and twenty-five or one hundred and fifty acres.
Q. What was that land worth per acre?

Objected to by defendant's counsel as not proper cross-examination and immaterial; and on the ground that it is improper cross-examination and incompetent; and witness has not shown his competency to testify as to values, and is a matter of opinion.
Objection overruled by the court.
Exception reserved by defendant's counsel.

A. I could not tell; there was no land selling in that neighborhood.
Q. Was it valuable land?
A. Yes, sir; that is, good land.
Q. As good land as they have in that community, is it not?
A. It is as good as others on the creek, I guess.
Q. Do you still own your land there yet?
A. No, sir; I sold it.

229 *Testimony of J. N. De Graftenreid.*

J. N. DEGRAFTENREID sworn.

Direct examination by A. A. JONES:

Q. What is your name, and where do you reside?
A. J. N. De Graftenreid; I live at Alamo Gordo.
Q. Are you acquainted with John B. Dawson, the defendant in this case?
A. Yes, sir.
Q. How long have you known him?
A. I have known him a long time.
Q. Did you know him in 1868?

A. Yes, sir.
Q. Where did he reside at that time?
A. On the Vermejo, in Colfax county, New Mexico.
Q. Where were you residing at that time?
A. On the Vermejo.
Q. When did you first go on the Vermejo?
A. In 1867.
Q. I will read you a description of a piece of land:

"All the land in the valley or drainage of the Vermejo river, in the county of Colfax, Territory of New Mexico, within the following boundaries: Commencing at the dam on said river, at the upper end of John B. Dawson's farm, thence running to a high point of rocks on the north side of Vermejo cañon, thence following along the top of the divide west of Rail cañon to the head of Saltpeter cañon, thence down along the top of the divide east of Saltpeter cañon to a point on a line with said John B. Dawson's rock fence, thence following the line of said rock fence across the Vermejo to the top of the divide between the Vermejo and Van Bremmer cañons; thence following the top of said divide to the head of Coal cañon, and thence along the top of the divide east of
230 Coal cañon to a point on said divide nearest the place of beginning, thence to the place of beginning." I will ask you if you know where that tract of land is?

Q. How far out on each side of the river did you and Dawson claim lands?

Objected to by plaintiff's counsel.
Objection sustained.

Q. How far out on each side of the river did that line extend?

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved.

A. It run out on each side far enough to take all the drainage.
Q. Drainage of what?
A. The Vermejo?
Q. During these years you lived there, who, if any one, occupied this tract of land that I read you a description of?

Objected to by plaintiff's counsel.
Objection overruled by the court.

A. Yes, sir.
Q. Do you know where that rock fence is?
A. Yes, sir.
Q. How long did you live on the Vermejo?
A. I went there in 1867 and left in the spring of 1871.
Q. On what part of the Vermejo did you reside?
A. When I first went there I lived right above what was called the Curtis place.
Q. Afterwards where did you go?
A. In 1868 I went up onto the land I bought of Maulding.

Q. Where was that land, with reference to the tract of land I have described to you?

A. It was right below the rock fence.

Q. What was the division line between you and Mr. Dawson?

231 A. The rock fence. The line that the rock fence was on.

Exception reserved by plaintiff's counsel.

A. Why, Dawson, and myself, and Curtis, and Taylor Maulding, and Dick Miller.

Q. You were probably mistaken as to the tract of land I called your attention to.

A. You meant all the tract, didn't you?

Q. I meant the tract I read to you.

A. That was Dawson's. I thought you meant the whole tract.

Q. In what way did Dawson occupy this tract?

A. He farmed it, and had cattle and horses. I don't think he had any sheep while I was there.

Q. On what part of this tract did his horses and cattle range?

A. They run up those cañons.

Q. During the time that you were there, did the animals of other people run in there?

Objected to by plaintiff's counsel.

Objection overruled.

Exception reserved by plaintiff's counsel.

A. No, sir; my cattle didn't even run in there.

Q. Did you have any conversation with any one in that neighborhood as to who claimed to own this tract of land?

A. Yes, sir; I have heard several say who owned it.

Q. Who did they speak of as owning it?

Objected to by plaintiff's counsel.

Objection overruled by the court.

Exception reserved.

A. They said Mr. Dawson was the owner of it.

Q. Did you ever have any conversation with Lucien B. Maxwell in regard to the possession of this tract of land by John B. Dawson?

232 A. Not that individual tract, I didn't; but he told me——

Objected to by plaintiff's counsel.

Objection sustained by the court.

Q. Did Maxwell come down on the Vermejo while you people were residing there?

A. Yes, sir.

Q. How often?

A. Oh, he was there on the creek several times.

Q. Did you have any conversation with him as to who was occupying any tract of land there?

Objected to by plaintiff's counsel.

Objection sustained.

Q. Did you have any conversation with him in regard to any tract of land which included this land here, or any portion of it?

Objected to by plaintiff's counsel.
Objection sustained.
Exception reserved.

The COURT: You can ask the witness if Maxwell knew who was in possession of this tract of land?

Q. Do you know whether Maxwell knew that Dawson was in possession of this tract of land?

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved by plaintiff's counsel.

Q. Did he know that he was or was not?

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved by plaintiff's counsel.

A. He knew that he was.

Cross-examination by T. B. CATRON:

Q. All of the possession which you pretend that Dawson
233 had to this property was by cultivating a portion and ranging some animals over the other portion, was it not; and living there?

A. I don't understand your question.
Q. Do you want to understand it?
A. Yes, sir, I do.
Q. All the possession which you pretend that Dawson had to that property was by cultivating a portion of it and living on it, and ranging his animals over other portions?
A. That is what I said.
Q. How much of the land did he cultivate?
A. I don't know how much there was under cultivation.
Q. Where was the cultivated land situated?
A. On the creek.
Q. Which creek?
A. Vermejo.
Q. How close to the creek?
A. Right along on the bank.
Q. How far did it extend out on either side?
A. Out to the foot of the hill.
Q. How far is that?
A. I could not tell you.
Q. Can't you give some idea?
A. No, sir; I never stepped it; I never went across it.
Q. You are no judge of distances, at all?
A. Of course, I could guess at it, but I could not tell correctly how much there was.

Q. What is the best of your judgment?
A. About a half a mile.
Q. On either side, or clear across?
A. When I was there he only had one side of it cultivated.
Q. Which side?
A. This side of the creek.
234 Q. I believe you said you left there in the year 1871, and went to the Alamo Gordo?
A. No, sir; I did not say that.
Q. What did you say?
A. I said I left there.
Q. Where did you go to?
A. To the State of Texas?
Q. How long did you live in Texas?
A. I left there in 1882.
Q. Remained in Texas from 1871 to 1882?
A. Yes, sir.
Q. After coming back from Texas, where did you go to?
A. I stopped on the Alamo Gordo, in this county.
Q. You haven't been back to that place since 1871, have you?
A. No, sir.
Q. You don't know anything about who has occupied that land, of your own knowledge, since 1871—not what people told you?
A. No, sir, I do not.
Q. Now, when did Dawson first go there?
A. He came there in the spring of 1868.
Q. With his family?
A. He came there, and after that, in 1868, he brought his family there.
Q. What time in 1868 did he come there himself?
A. In January or February; I forget now when.
Q. What time did he bring his family there?
A. That was along in the fall.
Q. Was there any house on the property when he went there?
A. Yes, sir; there was a house on it.
Q. How long had that house been there, if you know?
A. I don't know.
235 Q. Did he occupy that house?
A. Yes, sir.
Q. What size house was it?
A. It was a small room.
Q. Just one room?
A. Three or four rooms.
Q. Any land broken up there at that time, between that dam and the stone wall?
A. Yes, sir.
Q. How much?
A. I don't know how much.
Q. As much as there was when you left?
A. No, sir; he broke up more land.
Q. Who had occupied that place before he went there?

A. When we went there in 1867, Chase was living there.
Q. Did he remain there until Dawson went there?
A. Yes, sir.
Q. Who went there with Dawson at the time he went there in the early part of 1868?
A. I don't know. There was one man with him. I have forgotten his name.
Q. Any member of his family with him?
A. He didn't have any family then. He had that little boy then, but he was going to school.
Q. Was he there with him or was he at school?
A. He was at school.
Q. Where?
A. In Texas.
Q. Where did Dawson come from to that place—Texas?
A. The first time he came out there he came from Texas.
Q. When did this little boy come there with him?
A. In the fall of 1868.
236 Q. When the balance of his family came, did he come with them?
A. Yes, sir.
Q. What time did Dawson go away to get his family, in 1868?
A. I don't know when it was.
Q. How long was he gone?
A. Two or three months.
Q. When did he bring his first animals there?
A. In the spring.
Q. How many head of cattle did he have when he first came there?
A. He brought about one hundred and fifty cows.
Q. You mean by that, animals of the cow kind, do you?
A. There were cows and calves.
Q. One hundred and fifty in all?
A. One hundred and fifty cows with the calves.
Q. Each cow have a calf?
A. Yes, sir.
Q. You are certain of that, are you?
A. Yes, sir.
Q. How many horses did he have?
A. In 1868 he never had any horses except horses to attend to these one hundred and fifty cows with.
Q. About how many horses were there in there?
A. The best I can collect there was eight.
Q. What did he do with these horses?
A. Left them with his father.
Q. Where was his father?
A. Lived on his place.
Q. Did he keep the horses at the ranch or turn them loose?
A. He kept some of them to ride, and herded them cattle with the horses.

Q. He turned the cattle loose and let them go up the cañons, did he not?

237 A. No, sir.

Q. Where did he herd them?

A. He herded them up the cañons on each side of the creek.

Q. Sometimes at one cañon and sometimes at another?

A. Yes, sir.

Q. How long would they keep them in one cañon before they would move them to another?

A. Sometimes they would herd them about a half a day.

Q. Then they would cross the river and then go over to another one?

A. Sometimes. He did not herd the cattle right in the same range all the time.

Q. How long did he continue to herd these cattle before he got them used to the range?

A. They herded them all that year.

Q. How about the next year?

A. I was not there next year; I went to Texas.

Q. Then you must have gone in 1869, instead of 1870?

A. I went to Texas in 1869, and left my family there, and brought out a bunch of cattle.

Q. What time in 1869 did you go to Texas?

A. I started in March.

Q. What time did you come back?

A. I come back last September.

Q. You don't know anything about what was done during your absence?

A. No, sir.

Q. In the year 1870, how were those animals run, or were you there?

A. I was not there then.

Q. Where were you?

A. I went back down the Pecos after my cattle in the spring of 1870.

238 Q. What time did you come back with them?

A. I come back, I think, the last of May, if I am not mistaken.

Q. 1870 or 1871?

A. It was 1870. I moved in 1871.

Q. After May, when you got back, what did you do?

A. I went right on up to Colorado with the cattle.

Q. How long did you remain in Colorado?

A. I think it was the last of October when I got back.

Q. Then you remained there that winter, did you?

A. Yes, sir; I stayed there at home.

Q. Until you left in 1871? What time in 1871 did you leave?

A. Some time in March.

Q. Where did you keep those cattle you brought up from Texas?

A. That I brought up in 1870?

Q. Yes, sir, or 1869?

A. I did not have any. I had about ten head.

Q. You stated you went back to Texas in 1868 or 1869, and came back in the fall of 1869 with a bunch of cattle, didn't you? Where did you keep those cattle?

A. In 1869, as I came out, I left the cattle down on the Pecos, right above the Hondo river, and wintered them there.

Q. When did you move them from there?

A. I moved them in 1870.

Q. Where did you move them to?

A. Colorado.

Q. Didn't stop on the ranch?

A. I came there as I went up.

Q. Didn't turn them loose there?

A. No, sir.

239 Q. Now these cattle, did you see them herded, which they first brought there in 1868, in the cañons? Do you mean to say that they changed them from one cañon to the other every day?

A. Sometimes they would herd them all day, and in the morning they would turn them out, and they would not drive them where the herd had been the day before.

Q. Was it customary to take them to one of these cañons and turn them up the cañons, and afterwards bring them back in the afternoon?

A. No, sir.

Q. What did they do with them; how far did they let them go?

A. They staid with them.

Q. Who staid with them?

A. A man that Dawson had there.

Q. How far did he take them from the river?

A. I never asked him that.

Q. You never saw how far he took them?

A. Sometimes he would take them a mile—sometimes two miles.

Q. In which cañons did you see them?

A. I saw them in several.

Q. Will you please give me the names of the cañons that you saw them in?

A. Them cañons were all named after I left there. I saw them in the cañon that run in between me and him, right above the rock fence.

Q. On the west side?

A. Yes, sir.

Q. You saw them in that cañon?

A. Yes, sir.

Q. How far up that cañon did you see them?

A. I saw them once about a half a mile; another time about a mile.

Q. What other cañon did you see them in?

A. I don't know as I saw them in any other, that I know of.

240 Q. You saw them there from the time Dawson first came until you left to go to Texas, didn't you?

A. I noticed him turn them in and out whenever I was at Dawson's. I did not stay at Dawson's all the time.

Q. From time to time, as you went around, you saw the cattle there?

A. Yes, sir.

Q. You generally saw them around not far from the house?

A. Late of evenings and in the morning. In the daytime they all left the house.

Q. You never saw them in any other place except around the house, and in this cañon on the south side of the river?

A. No, sir.

Q. You never saw them in that cañon more than one day at a time?

A. I never saw them in that cañon at all, only the time I told you I did.

Q. Just two times?

A. No, sir; I saw them one-half a mile once; after that I saw them a mile.

Q. That makes two times, don't it?

A. Yes, sir.

Q. That is the farthest you ever saw these cattle away from the river, was it?

A. That is the farthest I ever saw them.

Q. Did you ever see any of these horses farther away from the river than that?

A. No, sir.

Q. I will ask you if some of these cows were milk cows.

A. Yes, sir.

Q. They milked them at nights, did they?

A. Yes, sir.

Q. Drove them home for that purpose?

241 A. Yes, sir, he drove them there for his father to milk.

Q. Who did that?

A. Mr. Dawson.

Q. For the old gentleman?

A. Yes, sir.

Testimony of John B. Dawson.

JOHN B. DAWSON sworn.

Direct examination by A. A. JONES:

Q. What is your name?

A. John B. Dawson.

Q. Are you the defendant in this case?

A. Yes, sir.

Q. Where do you reside?

A. On the Vermejo, in Colfax county, New Mexico.

Q. How long have you resided there?

A. This year it is twenty-four years.

Q. I will read you a description of a piece of land: "All the land in the valley or drainage of the Vermejo river, in the county of Colfax, Territory of New Mexico, within the following boundaries: Commencing at the dam on said river, at the upper end of John B. Dawson's farm, thence running to a high point of rocks on the north side of Vermejo cañon, thence following along the top of the divide west of Rail cañon to the head of Saltpeter cañon, thence down along the top of the divide east of Saltpeter cañon to a point on a line with said John B. Dawson's rock fence, thence following the line of said rock fence across the Vermejo to the top of the divide, between the Vermejo and Van Bremmer cañons; thence following the top of said divide to the head of Coal cañon, and thence along the top of the divide east of Coal cañon to a point on said divide nearest the place of beginning, thence to the place of be-
242 ginning." I will ask you if you know where that tract of land is?

A. Yes, sir.

Q. Who has been occupying that land, if anybody?

A. I have.

Q. How long have you occupied that land?

A. I have occupied it, in this year, twenty-four years.

Q. State the circumstances of your taking possession of that land, in 1868.

Mr. CATRON: We object to the question. If he relies upon occupation, the circumstances, how he took it, has nothing to do with it

The COURT: Just state your own conduct, your own acts, with reference to that land.

Objection overruled.

Exception reserved by Mr. Catron, of counsel for plaintiff.

Mr. JONES: Go on and state under what circumstances you took possession of this tract of land.

Objected to.

Objection overruled.

Exception reserved by plaintiff's counsel.

A. In 1867, these parties, Curtis, Maulding and Miller, came onto the Vermejo. Well, later on, in the year of 1868—early in the year—I came on through with a herd of cattle. I was a drover at that time. Curtis and Maulding told me they had a contract.

Counsel for plaintiff objects to witness stating what Curtis and Maulding told him.

Objection sustained.

Q. Where were they at that time.

A. On the Vermejo: that is, Curtis was living on the Vermejo, and Maulding and Miller were living right near the Sugarite cañon, near Raton. Now, this was some time early in the year of
243 1868, after Christmas. I went on with my cattle up into Colorado, and returned in the month of May, early in the

month; and Miller and Maulding were living on the Vermejo at that time. They said they had a contract.

Objected to by plaintiff's counsel.
Objection sustained.
The COURT, to witness: Confine yourself to your own conduct and acts, and what your purposes were in settling there.

Q. What land did these people claim to have possession of at that time?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. They claimed to have possession of the land from the dam that now belongs to me, down the river, to a place known as the O'Donnell farm, to the lower end of the O'Donnell farm, with all the drainage and lands the waters would flow in between those points to the Vermejo river.

Q. Did you make any arrangements as to your taking possession of any part of that land?

Counsel for plaintiff objects to any arrangement made by witness with the parties.
Question withdrawn by Mr. Jones.

Q. Did the land that they claimed to have possession of include any portion of this tract of land I read you a description of?

Objected to.
Objection overruled by the court.
Exception reserved.

A. All of it.

Q. Were they residing upon any part of the land that they claimed to have possession of at that time?

A. Yes, sir; in May. I could not remember the exact time in May, but in May, 1868, they were.

244 Q. State whether or not there was any arrangement made between you and them whereby you took possession of any portion of that land.

Objected to by plaintiff's counsel.
Objection sustained by the court.
Exception reserved by Mr. Jones, counsel for defendant.

Q. State who, if any one, told you to take possession of that land.

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. Mr. Maulding and Mr. Curtis.

Q. State what they told you when they told you to take possession.

Objected to by plaintiff's counsel.

Objection sustained by the court.
Exception reserved by defendant's counsel.

Q. How much land did they tell you to take possession of?

Objected to by plaintiff's counsel.
Objection sustained.
Exception reserved by defendant's counsel.

Q. Did you have any contract with them as to your taking possession of this land?

Objected to by plaintiff's counsel.
Objection sustained.
Exception reserved by defendant's counsel.

Q. Did they claim to have any right to this land?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. Yes, sir.
Q. What right did they claim to have?

Objected to by plaintiff's counsel.
Objection sustained.
Exception reserved by defendant's counsel.

245 Q. Did you ever pay any money for this land at the time you took possession, or afterwards?

Objected to by plaintiff's counsel.
Objection sustained.
Exception reserved by defendant's counsel.

Q. I will ask you if you ever had any conversation with Lucien B. Maxwell in regard to this tract of land, or your possession of it?

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved by plaintiff's counsel.

A. Yes, sir.
Q. Where was Maxwell residing at that time?
A. At Cimarron.
Q. Was that on the tract of land known as the Maxwell grant, or the Beaubien and Miranda grant?
A. Yes, sir.
Q. At what time did you have this conversation with him?
A. It was some time in June, 1868.
Q. State what that conversation was?

Objected to by plaintiff's counsel.

The COURT: I think anything said, except giving physical possession, would not be admissible. I think you can show that he took possession under him; that Maxwell went and showed him the boundaries and gave him physical possession of a certain part of the land.

Objection sustained by the court.
Exception reserved by defendant's counsel.

Q. I will ask you if Mr. Maxwell is dead?
A. I heard that he was.

Mr. CATRON: We will admit that he is dead.

Mr. JONES:

Q. Now, I will again ask you to state what that conversation was that you had with Maxwell in regard to the possession of that land.

Objected to by plaintiff's counsel.
Objection sustained.
Exception reserved by defendant's counsel.

246 Q. Did Maxwell know that you were in possession of that tract of land?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. Yes, sir.
Q. State whether or not you and Maxwell ever had any arrangement between you, or any understanding, as to the limits of your respective possessions upon that tract of land known as the Beaubien and Miranda grant.

Objected to by plaintiff's counsel.
Objection sustained.
Exception reserved by defendant's counsel.

Q. State whether there was ever any pointing out of the boundaries of your possession of land by you and Mr. Maxwell?

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved.

A. Just between us?
Q. Yes, sir.
A. Yes, sir, there was.
Q. State what boundaries were pointed out?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved.

The COURT: You can state what boundaries you fixed upon the earth's surface with regard to your respective possessions.

A. The boundaries were what you read in that description there.
Q. Did Maxwell, in his lifetime, ever make any request of you to surrender this possession to him?

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved by plaintiff's counsel.

247 A. No, sir.

Q. Was any money ever paid by you to Maxwell for the possession of this land?

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved.

A. Yes, sir.
Q. How much?
A. Thirty-seven hundred dollars.
Q. In what way, Mr. Dawson, have you been using this land since 1868?
A. For general ranching purposes, farming, and the raising of stock.
Q. Over what portions of this land have you been ranging your animals?
A. Over the entire place.
Q. State what improvements have been put on there by you.
A. You want me to enumerate everything, as near as I can?
Q. Yes, in a general way.
A. Well, I have a residence there, orchard, acequias, fences, barns.
Q. What fencing has been done, Mr. Dawson?
A. The first fence I built there was a stone wall.
Q. Is that the stone wall we have heard so much about in this case here?
A. Yes, sir.
Q. What fences are up in Rail cañon?
A. I have got one fence that begins at the dam, at the upper end of my place, and it runs to the point of that bluff; the point of rocks following the top of the divide around the head of Rail, and down the divide between Rail and Spring cañon, joins on the bluff of Spring cañon; then I have three cross-fences across the cañon that run from this fence from one side to the other.

248 Q. What fence have you in Coal cañon?

A. I have a fence that starts out from the same point, the point of beginning at the dam, and it runs up the mountain and across Coal cañon, and intersects into the head of Lacey cañon to a bluff to the west.
Q. I will ask you where the Van Bremmer cañon is.
A. Do you mean the portion in the mountain or on the prairie?
Q. Above your southern line?
A. You want to know who was in possession of it. Pat. Lyons was.
Q. State whether or not you and Pat. Lyons pointed out the boundaries between your possessions.

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. Yes, sir, there was an understanding between us.
Q. What was your boundary line?

A. Well, my part of it was from the head of Coal cañon, right at the divide where the water flowed into Coal cañon; and he claimed where the waters flowed into Van Bremmer.

Mr. CATRON: I object to that answer, and ask that it be stricken out.

The COURT: The motion is sustained as to his stating where the boundary line between himself and Lyons was. The last answer of the witness is stricken out.

Exception reserved by defendant's counsel.

The COURT: Gentlemen of the jury, any arrangement made between the witness and Pat. Lyons, with respect to their respective boundaries, is immaterial, and is stricken from your consideration.

Q. How were Lyons' cattle and yours managed, with respect to this boundary line of yours that you have spoken of?

249 Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved.

A. I kept mine from the divide beyond the cañon, and he kept his on the Van Bremmer.

Q. Was there any people over on the Van Bremmer who owned cattle—I mean above your line?

A. Yes, sir; there was the Woodburn's further up.

Q. How did they manage their cattle, with respect to your line?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. They kept them on the Van Bremmer and in the vicinity there.

Q. I will ask you, Mr. Dawson, to state whether cattle of other people ranged at any time within these boundaries here; and if so to what extent? State how they were managed.

A. A few of these cattle we have been talking about would stray over onto the cañon at times. When I found them I drove them out.

Q. Did you ever ride around over this tract of land you claimed?

A. A great deal, sir.

Q. To what extent, in a general way?

A. Oh, I rode a great deal.

Q. In the early days there, how were cattle managed in that vicinity, with respect to keeping them on the range, and in the way that they were handled there?

A. From what time?

Q. I will let you mention the different periods—how they were managed at different times—if you will.

A. From 1868, the time I went there, until 1880, 1881, along in 1882 and 1883, they were kept pretty close around the ranges.

250 Q. What was the character of the grass in that country during those years?

A. It was good up until 1880; very good.

Q. What was the disposition of the cattle as to those years, as to straying away, in comparison with later years?

A. They were kept a good deal closer during the times I speak of than they were afterwards.

Q. Did they have the same inclination to stray away then that they had in after years?

A. No, sir.

Q. Well, state how the cattle of all your neighbors up there were managed, with respect to your tract of land, after 1883?

A. Well, there were more stray cattle came onto my land after that time. They were driven back to their ranges by their owners and myself.

Q. State whether or not you had any one there upon your place for the purpose of looking after your cattle.

A. Well, now, it would become necessary, if it was in order, for me to give a little history. In the first place, in 1868, some time in the early part of May, I made a contract with M. M. Chase for the term of three years. Now, Chase at this time was on this property. He had gone there in 1867. He had some kind of a contract.

Q. I will ask you in that connection, Mr. Dawson, what Mr. Chase did with reference to the land after you went there?

Objected to.
Objection overruled.
Exception reserved by plaintiff's counsel.

A. I don't know that I understand the question.

Q. You stated that Chase was living on this land when
251 you went there. State whether he did live on that land after you went there.

A. Yes, sir.

Q. By what authority did he stay there after you went there?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved.

A. A contract to keep the cattle, and farm it for the term of three years.

Q. Between whom was that contract made?

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved by plaintiff's counsel.

A. Between Chase and myself.

Q. Go on now and state with regard to the cattle.

A. In the month of May, 1868, I made this contract with Chase, he being on the place at the time.

Q. What was that contract?

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved.

A. The same contract I mentioned awhile ago; it was a contract, for three years, to take care of my cattle on the partida.
Q. Where was he to keep these cattle?
A. On the ranch that you read the description of.

Mr. CATRON: I object to his stating the contents of the contract, and except.

Q. The contract was not in writing, was it?
A. No, sir; it was verbal.
Q. Go on, Mr. Dawson.
A. He fulfilled the contract.
Q. How many cattle did you let him have?
252 A. I let him have two hundred cows and twenty brood sows; I did not think to mention them when I spoke of the contract.
Q. Before the expiration of the three years, did you have any other cattle there?
A. Yes, sir.
Q. How many did you put on there?
A. In the same year, about October 1st, I went on it with my family, and put cattle on about the first of November—other cattle.
Q. Did you have any horses on there?
A. At the time I went on it myself, I did.
Q. Mr. Dawson, have you ever talked with your neighbors as to what land you claimed up there?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved.

A. Often.
Q. Well, state whether anybody has ever claimed any part of this land; and if so, when—except yourself, I mean.

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved.

A. No, sir; not that I know of, until the Maxwell Land Grant Company built that beef pasture.
Q. When was the beef pasture built by the Maxwell Company?
A. I don't remember the exact year. It has not been long ago; I believe it was in 1889.
Q. How much of your land did they include within that fence?
A. Do you mean in acres?
Q. No, sir.
A. Well, they took in a portion of Rail cañon and the biggest part of Saltpeter.
253 Q. Since that pasture was built have you had any animals grazing within the claim there, and within that fence?

A. Yes, sir.

Q. Well, I will ask you to state, Mr. Dawson, whether any representative of the Maxwell Land Grant and Railway Company ever visited you for the purpose of ascertaining the boundaries of your land?

A. Yes, sir.

Q. State who it was.

A. The first one was W. R. Morley, I recollect of now.

Q. When was it he came upon your place for that purpose?

A. In 1871 Morley came to my house and said he was directed to survey my land by Mr. Reid, the president.

Mr. CATRON: I object, and except to this testimony.

WITNESS: I was at the time in bed with my leg broke. He asked me at the time what I owned there, and I gave him the description, the same as you read there, of this property, as near as I could. I told him I could not go out with him. I said, "You see the condition I am in," and I asked him if he was going to survey it, and he said yes. He went out. I don't know where he went to, how long he was gone, or anything about it. I was feeling pretty bad. After I got well—I would not be positive as to the time, it may have been three, six months, or it may have been a year—I saw on the general map of the Maxwell Company, or whatever company it may have been named at that time, the piece of land he had surveyed for me near the center, and my name placed in it, and the number of acres; my recollection is now, 1,260 acres. Upon meeting Morley afterwards, I asked him, "Morley, why didn't you run around that land as I described it?" His answer to me was this——

254 Mr. CATRON: It is understood I object, and except to all this testimony.

The COURT: Very well; I admit it now, assuming they will prove that Morley was the authorized agent of the company.

Exception reserved by plaintiff's counsel.

WITNESS: I am a little ahead of my story. He spoke of the deed at my house. I don't know whether he got this deed that was in my possession or not. I rather think my wife showed it to him. I asked him why he hadn't surveyed this plot of ground as I told him, and he answered me, "Dawson, there is not a man in the world that can take that deed and survey this land." That was the end of the conversation. Morley and I were always friends, but not extremely so.

Q. Did you tell Morley by what authority you claimed that land?

A. I told him I had bought it from Maxwell.

Q. Did Morley say anything as to whether the land described in that deed could be located anywhere or not?

A. That is exactly what I understood him; that it could not be.

Q. That the land described in the deed could not be located upon the ground?

A. Yes, sir.

Q. How many people did you have upon your ranch looking after your cattle?

A. At different times, or at any one time?

Q. I mean along at different times. How were they managed?

A. I could not tell you, because sometimes I would have one man; sometimes I would have half a dozen men; sometimes I looked after them myself; sometimes my boys.

255 Q. What were your instructions to your men as to how they should manage your cattle, with reference to this land—that is, if there were any such instructions? Did you give your men under your employ any instructions how they should manage your cattle and how they should run them?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. Yes, sir.

Q. State what those instructions were.

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved by plaintiff's counsel.

A. To keep them on that property,

Q. Now, so far as you know, of your own knowledge, state what they did.

A. Well, they herded the cattle right around there—drove my cattle in and *and* drove strays out that got in there.

Q. Did you ever do any of that work yourself?

A. Yes, sir, I did.

Q. State whether or not The Maxwell Land Grant Company, the plaintiff in this case, has had representatives upon your place.

A. I don't know as I understand you.

Q. Has Mr. Pels, or Whigham, or the other representatives of the Maxwell Land Grant Company, been upon your place?

A. They have been to my house; yes, sir.

Q. How often have they been there?

A. Ever since I have known them; very often.

Q. Did they know that you claimed to own any land up there?

Objected to by plaintiff's counsel.
Objection overruled.
Exception reserved.

A. I reckon they ought to.

256 Q. State whether or not they have ever spoken of your place up there.

A. Yes, sir.

Q. In what way?

Objected to by plaintiff's counsel.
Objection sustained.

Q. What representatives of the company have been there?
A. Mr. Pels, and Mr. Whigham, and Mr. Preston.
Q. Has Mr. Frank Springer ever been there?
A. Oh, yes, sir; Mr. Frank Springer has been there.
Q. What position, if any, does Mr. Pels hold under the plaintiff in this case?
A. General manager.
Q. And Mr. Whigham?
A. Mr. Whigham has always been, since I knew him, an officer of the grant. I think he is the land agent, and he has been superintendent, and I think he was receiver.
Q. And Mr. Preston?
A. He is general engineer and surveyor—something of that kind.
Q. What do these people do when they come upon your place?
A. The first thing they would do they would eat a good hearty dinner.
Q. Did they bring any persons with them?
A. Yes, sir.
Q. For what purpose?
A. To see what my products were, to look over my orchards and my fields, and to show these people what the country would produce and what it was good for.
Q. Have you seen any circulars issued by that company?
A. Yes, sir.
Q. Did those circulars refer to your place?

257 Objected to by plaintiff's counsel.
Objection sustained.

Q. Have you ever had any conversation with them as to what you claimed?
A. I have with Mr. Pels.
Q. State what that conversation was.

Counsel for plaintiff object, on the ground that a conversation with Pels cannot bind the company; it is a single conversation, and can't prove notoriety.

Mr. CATRON:

Q. When did you have the conversation with Mr. Pels?
A. Different times.
Q. The first time?
A. The time we had the talk was about the time they built the beef pasture; that was in 1889.

Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. I was in Raton, in Mr. Pels' office.

Mr. CATRON: Whatever he states goes in over our objection and exception?
The COURT: Yes, sir.

WITNESS: Mr. Pels remarked to me he understood I had made objections and claimed that land they had fenced for a beef pasture; and I spoke to Mr. Pels in answer, saying, "Mr. Pels, that is my land;" and we had a little sort of a dispute—I don't just remember the words. About that time Mr. Whigham came in from an adjoining room or closet, and Mr. Pels turned from me and referred the matter to Mr. Whigham. Whigham did not reply, and I waited, and then I says, referring to Mr. Whigham, that this was my land; that I had always kept stock on it; that I had made ten thousand rails in Rail cañon, about eighteen years before, and that that was the way it got its name; and Mr. Whigham turned then and walked, with his back kind of to me, a little ways across the room, and
258 turned back and made some remark that was in regard to some other matter; and that was the end of the conversation.

Q. Are you acquainted with Marion Littrell?

A. Yes, sir.

Q. What position, if any, did he have with this plaintiff at that time?

A. Why, he was boss of the cattle round-up, or business.

Q. For whom?

A. For the company.

Q. How long has he been the foreman for the cattle company?

A. I think he has been the foreman, off and on, ever since they commenced the cattle business.

Q. Was he the cattle foreman about the time that fence was built?

A. Yes, sir.

Q. State whether you had any conversation with him about that time.

A. Yes, sir.

Q. Was he taking any part in the building of that fence?

A. Yes, sir.

Q. Now, state what conversations, if any, you had with him.

Objected to by plaintiff's counsel.

Objection overruled by the court.

Exception reserved.

A. Littrell came down by my house in the evening, going down to the creek, where he lives; and I had heard, a day or two before, that they were building this fence. It leaked out to me; I don't know how exactly; I hadn't known it before; but it had been some time they had been working at it, and I seen him passing, and so I walked out to the road and spoke to him. Said I: "Marion, I understand the company is building a beef-pasture fence up
259 there in the cañons of Rail and Saltpeter." He said: "Yes, sir; they are." I said to him: "When you get home, if any of those parties are there, tell them that I said they must not build any fence on my land; if they do, I will stop them."

Q. Did you have any cattle, in partnership or otherwise, other than the cattle you have mentioned, on this tract of land?

A. Yes, sir.

Q. State the first cattle you had, other than those that you had on this land.

A. I think the first cattle I owned, me and Chase had some cattle in company.

Q. Where did you keep those cattle?

A. On the Van Bremmer.

Q. By what authority, if any, did you keep them there?

Objected to by plaintiff's counsel.

Objection overruled.

Exception reserved.

A. We had some land leased over there.

Q. From whom?

A. From the company, I understood. Mr. Chase attended to the business at that time.

Q. Did you ever have any conversation, yourself, with any of the managers of the company, with regard to that land?

A. Yes, sir.

Q. State what it was.

A. Mr. Whigham came to me near his office, in Cimarron, and demanded the lease money at one time; it was $125.00, as well as I remember now. I don't think I paid it; I think I referred him to Chase.

Q. Did you have any cattle at other times in that country on this grant, except on the tract of land described?

A. Yes, sir.

Q. Where did you have those?

260 A. We fenced a pasture there. It was fenced in 1880, and it was known as the Horseshoe pasture, and we leased 9,600 acres from the company for ten years.

Q. Where were your sheep kept?

A. On the eastern boundary line of the Maxwell grant.

Q. By what authority are these sheep kept over there?

A. That was under a verbal contract with Mr. Whigham.

Q. Have you any contract from the company for any land?

A. You mean for purchase?

Q. Yes, sir.

A. Yes.

Q. Where are those sheep kept—on what tract of land?

A. We own a good deal of land, I and my boys, east of the east boundary line of the grant; and we have a contract for three pieces of land on this east boundary line. We run them there. Sometimes we have them on this land of the company, but mostly out on the Government land and out on our own property.

Q. Have you any arrangements as to the running of them on the grant lands, over there?

A. Nothing more than I spoke to Whigham about it, making these trades with him. I bought some of this land, and in talking with him I asked him about running them there, and he gave me

verbal permission. He said I could run my sheep there as long as he had anything to do with it, and it was not sold.

Cross-examination by T. B. CATRON:

Q. What is your age, Mr. Dawson?

A. I am sixty-one years old; I will be sixty-two the 10th day of November.

261 Q. When did you and Chase first have these cattle in partnership, which you had on the Van Bremmer?

A. It is pretty hard for me to remember the date; I will try, though, if you will give me time. It must have been in 1871 we commenced this cattle business there. We bought the cattle from Maxwell.

Q. How many cattle were there?

A. We had about eight hundred, I think.

Q. What was the brand on them?

A. Two-cross, I believe.

Q. You bought them from Maxwell when he left there to go to Sumner?

A. No, sir; I bought them from Maxwell while he was at Sumner, and drove them up there.

Q. You drove them straight to Van Bremmer, did you?

A. I think so.

Q. How long did you keep those cattle?

A. I can't remember the dates well. We bought them and brought them there in 1870, I think; and sold them to Dr. South some time in the seventies.

Q. Six or seven years afterwards?

A. Not that long. I think the cattle were sold in March 1873 or 1874.

Q. Do you mean that you did not keep them but two years?

A. That is my recollection now.

Q. How many of them were there?

A. About eight hundred.

Q. How many were there when you sold them?

A. Not many more.

Q. Was there not any increase of the cattle, nor any death?

A. They were mostly steers.

Q. Did you return these cattle for taxation?

A. I suppose I did. I never failed to turn my taxes in, and pay them.

262 Q. In whose name were those cattle returned for taxation?

Objected to as immaterial.

Objection overruled.

A. I don't know whether it was "Chase & Dawson;" that was the name of the firm. I presume it was Chase & Dawson.

Q. Do you remember whether you ever returned them, specifying that you returned the interest of Chase in them?

A. I don't understand.

Q. Did you ever make a return of those cattle in your name, stating in the return you included Chase's interest in them, also?

A. I don't know, for sure. I think we put them in as Chase & Dawson's.

Q. Do you mean to say that you made a separate return for Chase & Dawson than you did for yourself?

A. I will not say, because I don't remember.

Q. Did you ever make a return of taxes for any cattle which stood in your and Chase's name, outside of this herd of cattle?

A. I don't remember, but I may have done so.

Q. Did you and Chase own any other cattle in partnership?

A. We owned the Horseshoe cattle. The firm was known as Chase, Maulding & Dawson. I have got that wrong; it was Chase, Dawson & Maulding.

Q. If you ever returned those cattle, including Chase's interest, you would have returned Maulding's interest, too, would you not?

A. It is impossible for me to say. I think it was given in as company cattle. It may be that each one gave in their own cattle.

Q. When was that partnership formed you have just been telling about?

263 A. I think we bought the cattle in 1878; I am not sure.

Q. When did you form the partnership—in 1878?

A. I think so.

Q. Did you own any cattle, yourself, outside of the few you were running on this property, that were not in partnership with anybody else?

A. None, as I remember of, except what I had on my ranch.

Q. What became of the cattle Chase had on the shares?

A. In 1868, Chase took these cattle on partida. He was to keep them three years. That would be until 1871. Now, in 1871, about July, or earlier than that—I will have to go back a little—I was quite unfortunate. My wife died, and these cattle were due, and I was very restless. I took my little children and gave them to my mother to keep, and thought I would take these cattle and drive them off and sell them; and, so I got them together, Chase and I, and some other cattle I had, and I cut out about one hundred head of choice heifers and cows and turned them over to Bill Mercer, who was to keep them on the place that Chase had occupied, at the upper end of my place, near the dam; and I put a man named Saylers in my house where I lived, and I took the cattle I got from Chase, and some cattle I had on my ranch during those three years—about eight hundred head—and I drove them to Utah. That boy, then (meaning his son), was about nine or ten years old. He went along with me. I sold them up there at the head of the Sweetwater, between there and North Platte, or Green River.

Q. How many cattle did you turn over to Mercer?

A. One hundred.

Q. What kind of cattle were they?

264 A. Select heifers and cows, from that bunch of cattle I had there on the place.

Q. What became of the increase of the cattle you had with Chase?

A. He took his part of them; I told you what I done with mine.

Q. Did you take all the cattle which Chase owed you on that partida contract and take them to Utah—the whole lot?

A. There were some of this one hundred head I left there taken out of them, and there was some of the one hundred head that were of other cattle I had there, myself.

Q. Did you take all away except such as you turned over to Mercer?

A. Yes, sir.

Q. Did you have any other cattle of your own outside of those, after you turned them over to Mercer; that was, in 1871 or 1872, about? Now, in the year 1873 or 1874, did you have any other cattle besides those you turned over to Mercer, and the increase of them, and those you had on your own ranch? I mean cattle which were not in partnership with any one else.

A. I was dealing in cattle, buying and selling continuously; and, to tell you just now of all the cattle that I handled, what I did with them, and how many, would be ridiculous.

Q. Where did you keep those other cattle that you were buying constantly?

A. Well, sir, I will have to go back and give you a history of my cattle business since 1853.

Q. No, I will commence with the year 1874. How many cattle had you in 1874, in your own name—outside of your partnership cattle?

A. To answer that, I have got to go back to 1868. Some
265 time in May, 1868, I let Chase have these two hundred cows on partida. In June, 1868, I went to Denver. I had no family but that little boy, then, and he was in Texas. I visited around in Denver until the 15th or 16th of July, and then I left there and traveled, by coach, to Kit Carson; to that place at the end of the K. P. road, run down on the road and got to some place about Lawrence, in Kansas, and then took the stage and went from there to Fort Gibson; then I bought me a horse there, and rode from there to Beal Station, in Texas, a distance of three hundred miles. There is where this child was. Now, I got down there and he was with his grandfather. I met a young lady there, named Miss Laura Stout; we got acquainted, and I was married to her on the first day of September, 1868. I then took her and my boy and returned. It took us almost a month to get back. We came in on the stage coach to the station where the old station on the Vermejo was, and Dick Miller was living there. This was about the first of October. I then took my wife and child and went on this place, in 1868.

Q. You were absent, then, from about the 1st of June to the 1st of October?

A. Yes, sir.

Q. I believe you stated that early in the year, when you first came up there from *from* Texas, you went up to Colorado with a herd of cattle?

A. In 1867 I brought a herd of cattle from Texas to the Pecos

river, down about Fort Sumner, and left them there, and got on a horse and rode up to this settlement on the Vermejo where these people were.

Q. What time did you come there?

A. In 1867. It must have been close to Christmas, I guess.

Q. Then you afterwards went back to that herd, and got them and went back to Colorado, didn't you?

A. I went from there on the coach to Cheyenne. Between Cheyenne and Denver I met up with Iliff, contracted the cattle
266 with him, and went back after them, and come up in 1868, in the month of February.

Q. What time did you take the coach and go to Cheyenne?

A. I did not stop long on the Vermejo.

Q. What were you doing while you were there?

A. I went up to the place I now live at. My father and mother were up there. They had come in from Texas in 1867, and I staid all night with them, and the next morning I got up and took the coach and went to Denver.

Q. Then it was on that trip you went to Denver you contracted to sell these cattle and bring them up?

A. Yes, sir.

Q. Then you went straight from Denver down to the place you left the cattle, did you?

A. I came down here to the station on the Vermejo.

Q. How long did you remain there, before you went after the cattle?

A. Might have staid there a week, two weeks; maybe not more than two or three days.

Q. Did you go on below after the cattle, or some place else?

A. I went on down where the cattle were.

Q. What time did you get there, where the cattle were?

A. I don't remember now.

Q. While you were there on that trip you started these cattle north, did you?

A. Yes, sir. I went down there and got the cattle, and was in no hurry about it.

Q. You staid there and looked after them; rounded them up, and got away, did you?

A. Yes, sir; got everything together, and started them up. My recollection is now, it was about the 1st of February.

267 Q. Did you go with them yourself?

A. I did.

Q. To what point did you drive them?

A. I drove them to Apishapah, near Trinidad.

Q. Is that where you turned them over?

A. Do you know where Fisher lives there?

Q. Yes, sir.

A. I turned them over to J. W. Iliff right there, on the 4th day of March.

Q. Then what did you do?

A. I met Charlie Goodnight; you know him. He had bought

all the cattle down there below Fort Sumner that was for sale, and he said, "If you will furnish some money, I will let you have half of my trade," and I agreed to that; and we picked up the cattle and brought them up here and sold them.

Q. Where did you meet Charlie Goodnight, at Foster's?

A. I don't know whether it was there or at Clifton.

Q. Up in Colorado?

A. I don't know whether it was in Colorado or New Mexico.

Q. Then did you go straight to where these cattle were that Charles Goodnight had bought?

A. We come on down to that settlement where those people were, on the Vermejo.

Q. How long did you stay there before you wen- on?

A. I could not tell.

Q. I want to find out how long you remained there after you came back with Charles Goodnight.

A. I could not tell you.

Q. How long did it take you to go from Foster's place until you arrived at your father's place?

A. I think about five or six days.

Q. Did you go back to your father's place?

268 A. I think I visited the old people.

Q. Were they living in the same house you now have, or in the house Chase had there, or some other house?

A. At this time my parents were at Dick Wooten's, in the Raton mountains.

Q. You stopped there where they were?

A. Yes, sir.

Q. Then you did not go into the Vermejo and stop?

A. Yes, I came on down that way, and stopped there.

Q. How long did you stop at the Vermejo?

A. I don't know; maybe stayed all night.

Q. Stopped at Dick Miller's?

A. I think I stopped at Curtis's; I don't remember.

Q. Up to that time you hadn't taken up any interest in these ranches, had you?

A. No, sir.

Q. You had taken no possession of any particular place there?

A. No, sir.

Q. You staid there a night or so and then went on south with Charlie Goodnight, did you?

A. Yes, sir.

Q. Where were the cattle you and Charlie Goodnight were after?

A. They were there about Fort Sumner.

Q. You say you gathered these cattle and sent them north?

A. Yes, sir.

Q. About what time did you get away from there with these cattle; from Fort Sumner?

A. I don't remember, but as quick as we could make the trip.

Q. It took you some time to gather the cattle?

A. No, sir, they were in a herd.

269 Q. Where did you drive them to?

A. Apishapah.

Q. What time did you arrive at Apishapah on that occasion?

A. About the 20th of April.

Q. How long did you remain there then?

A. Only a few days.

Q. Then where did you go?

A. Back to the Vermejo.

Q. How long did you remain at the Vermejo until you left there?

A. Well, sir, I don't know the time; I was there that time about a month, maybe a little longer.

Q. Whose house did you stay in?

A. Well a good part of the time I was fishing and hunting there.

Q. Is it good fishing in the latter part of April and the fore part of May, when the waters are high?

A. It is very good fishing in April.

Q. Did you do anything else except fishing and hunting, from the 20th of April on—you say you got back there about that time, and stayed there about a month?

A. It might have been a little longer than a month. I was fishing and hunting some, and resting. I had been pretty hard at work before that, and I had a great many friends there—these people that were there, Maulding, Curtis, De Graftenried, my father and mother—they had moved back from where Dick Wooten was. They were all my friends, and I was visiting among them; and at this time, while I was there, I made this trade with Mr. Chase I was telling you about.

Q. About the sheep?

A. No, sir; it was about these cattle on partida.

Q. Where did these cattle come from that you let Chase have?

A. These 200 head?

270 Q. Yes, sir.

A. Those 200 head of cattle were a part of the cattle I dropped out of the herd I and Goodnight took up above.

Q. What kind of a house had Chase there?

A. About the average of the country them days; it was rather poor.

Q. State whether it was "adobe"—what it was built of. How many rooms had it?

A. It was an adobe house with a dirt roof.

Q. How many rooms?

A. Three rooms built along in a row.

Q. Where was it situated, with reference to this stone wall you have there, and the dam above?

A. Well, sir, it is a little nearer the rock fence than it is to the dam.

Q. How close to the river?

A. The house was about 250 yards from the river.

Q. How long did Chase remain in that house after that?

A. From May, 1868. He staid there until some time in the fall of the same year.

Q. Where did Chase go then?

A. He built a house below the dam a little ways, and he lived there three years.

Q. Take his cattle up there with him?

A. His cattle were up in these cañons, except what he milked?

Q. What cañons?

A. Rail cañon and Coal cañon; first one side, then the other.

Q. He moved them from place to place, did he?

A. Yes, he took them up into Rail cañon, and sometimes into Coal cañon.

Q. As the grass would grow scarce in one place he would move them to another place, and let the grass recuperate where he had them, would he?

271 A. He did not close-herd the cattle; just turned them loose up in the cañons, and watched after them.

Q. Like all cattlemen, when the cattle exceeded the grass in one place they would sort of work them along to another place, wouldn't they?

A. They would work themselves.

Q. They would move out of the place they had eaten all up.

A. The main work, as everybody knows, in the cattle business there, is not so much trouble in moving them up as it is to keep them back.

Q. These cattle did not stay in the same place—they kept moving?

A. Certainly.

Q. Cattle would sometimes come from Rail cañon to Saltpeter cañon?

A. He put them over in Saltpeter sometimes.

Q. Then he drove them from one cañon to the other?

A. Yes, sir.

Q. Would he drive them from one of these cañons to Coal cañon, or would they go by themselves?

A. He just moved them around wherever the feed was good, and kept them in good shape.

Q. When was it you got your first cattle, outside of those of Chase's, on this property?

A. When I got back with my family, I left them up there at my place, and went back to my old trade.

Q. What house did you stay in there?

A. Staid in the house with Chase.

Q. What did you do?

A. I went back to my old trade, buying cows.

Q. State where you went.

A. I went to Fort Sumner and bought a herd of cattle, and drove them up to Red river, near the Tenejah mountains, and sold

272 them to Frank Wilburn and Tom Stockton, except about 100 cows and calves. I brought them over to my place. That is the first cattle.

Q. Then there were about 100 head.

A. There might have been more. I had about 4,000 head, and I selected from them 100 cows and calves. Maybe there was 125 head; I am not sure.

Q. About what time did you get them over to the Vermejo?

A. Pretty late in the season; I think December.

Q. What did you do with them when you got them there?

A. Turned them in those cañons.

Q. Did you turn them all into one cañon?

A. Chase and I run our cattle in there. We were not very particular whether they got together.

Q. Did you turn them in with Chase's cattle?

A. I did not turn them loose with his; they got together, more or less.

Q. After that, yours and Chase's cattle were handled alike; they went from cañon to cañon, as occasion required it; is that what you mean, or did you use your cattle any differently from what he did his?

A. I did use them differently, because I bought and sold, and he did not.

Q. While you were ranging them, did you range them the same as he did, or did you range them differently?

A. Very much the same.

Q. From Rail cañon to Saltpeter and Spring cañon, is that correct?

A. Well, yes; they weren't all in the cañons; on them hills inside that property is where I run them.

Q. If they were not herded, they sometimes got outside the range?

A. Some of them would get out.

Q. You say you did not herd them?

273 A. No, sir.

Q. Now, how would they get across the Vermejo river from Rail cañon and Spring cañon over into Lacey and Coal cañons?

A. Drive them across.

Q. Was there any time when you drove them all across there, or one of them? Do you think you ever herded them all over there, at any one time—not herded them, but drove them there?

A. I don't remember. I don't think we did. We moved them around the best we knew how at that time.

Q. When you wanted to get your cattle from one side of the river to the other, from where Rail and Saltpeter cañons were, you drove them across from one side to the other—do you mean to say you gathered up all you could get hold of, and drove them over there; that that is the way you ranged them from one side of the river to the other?

A. When we put them in Coal cañon we did not let them have so much liberty as on the other side.

Q. At that time, when you put them over there and somewhat confined them, do you mean to say you had the principal part of

them there—all that you could conveniently get hold of? In changing them from Rail cañon, did you undertake to take the bulk of them over there?

A. Yes, sir; we watched them closely.

Q. When you had them in Rail and Saltpeter cañons, you kept them close?

A. Yes, sir; if we hadn't, the Indians would kill them.

Q. They would also stray away?

A. There was not much danger of that. The Indians would kill them for beef.

Q. For that reason you kept them pretty close together, and moved them from point to point?

A. Yes, sir.

274 Q. How many horses did you take there with you?

A. Not very many.

Q. How many was the greatest number of cattle, outside the Chase cattle, you had on that ranch at any one time, after Chase's cattle were taken away?

A. Well, sir, I think, maybe one thousand head.

Q. How long did you have one thousand head on it?

A. We had six or seven hundred head a good portion of the time. This one thousand head I speak of, we had them there in the fall of 1887, and kept the most of them that winter in Coal cañon. We turned them loose right there close to the house, and some of went on this side, but I think the bulk of them was in Coal cañon.

Q. That was a lot of cattle which you had bought shortly before that, I suppose. You only had them about a year?

A. I think we had them most of the winter.

Q. You think you only had them during the winter?

A. Yes, sir.

Q. If I understood you, or some of the other witnesses, correctly, it was a very dry year in 1880, and the grass was not so good during that year.

A. Yes, sir.

Q. Now, between 1871, when the Chase cattle were taken away, up to 1880, the time this grass was short, what was the greatest number of cattle you had on that ranch at any one time?

A. I don't know that we had over three hundred; that is, of my own cattle.

Q. You had no other cattle there, had you?

A. My boys did.

Q. I am speaking about you.

A. No, sir.

275 Q. Those cattle you let Mercer take, he took them up the cañon of the Vermejo, didn't he?

A. It was not intended he should.

Q. What did he do with them up there?

A. He put them up in Rail cañon.

Q. Didn't he run them up Vermejo, too?

A. I think he did, sometimes.

Q. He moved his cattle about just like you and Chase did, didn't he?

A. He kept them in them cañons and on the hills. He did not keep them very long, anyway.

Q. How long did he keep them?

A. I think he had them about a year.

Q. What became of them after that?

A. I took them from him. He did not stay there long.

Q. He turned them over to you?

A. Yes, sir.

Q. From 1871, after Chase ceased to run his cattle there, up to the time the present law with reference to round-ups took place, in 1883, I think, did you run your cattle on that range just the same way you and Chase had been running them before Chase went away, or did you establish round-ups of your own?

A. Well, I run them very much the same, and had my boys and had some Mexicans working for me; and sometimes it would be necessary for one man to do the work, and sometimes more.

Q. But you did not let them run loose, and round them up at different seasons of the year; but you undertook to keep up the same way of running them that you and Chase had done together?

A. The cattle that belonged to the range, I tried to keep them on the range.

Q. You tried to keep them on the same way you and Chase
276 had done, or did you try to keep them on by herding and rounding them up at different seasons.

A. I never established any round-up on my place.

Q. Then, if I understand you, you continued to run them the same way you and Chase had run them together?

A. I never had to do any rounding up much.

Q. You keep that system up to the present day?

A. I run my stock so yet. I commenced building fences as quick as I could get something to build them with.

Q. Then I understand you to say, instead of going into the round-up system under the laws of the Territory, you have run your stock just the same as when you started in, when you and Chase started together?

A. Why, I built pastures.

Q. You have stated the way that you and Chase run your cattle together from 1868 up to 1871—during those three years—you have stated that quite fully. Now I will ask you, from 1871 up to the time you built those pastures, did you continue to run those cattle on the range in the same manner you and Chase had been running your cattle, or did you run them according to the general round-up season?

A. I kept my own cattle as near as I could on my own place, and still do it, for that matter; but the first round-up work I had much to — with was after I bought my father's cattle.

Q. When was that?

A. I don't recollect the date.

Q. Your own cattle, independent of what you bought of your

father. What I want to know is whether you handled your cattle in the same manner you and Chase had handled them together during the years 1868, 1869 and 1870, or whether you handled them in some other way. I understand you and Chase kept them on the range as well as you could. Now, did you continue
277 to handle your cattle that way, or did you adopt some other system of handling them?

A. I don't understand how a man could do it otherwise than to watch his cattle.

Q. The way you and Chase did?

A. Yes, sir; we kept them on the range. I always watched them and took the best care of them I could, and as I got any material for fencing, I fenced in my place.

Q. You do not understand me. I am asking you whether you kept up that same system of watching them, keeping them as near together as you could conveniently for the benefit of the cattle, up to 1883, just as you and Chase had done, or whether you turned them loose and let them run without watching them?

A. Those that belonged at the place I tried to keep them there.

Q. State whether or not you continued to handle the cattle that belonged to your home ranch, in the same manner you and Chase managed your cattle, when Chase's cattle were there; and, if you did manage them in the same way, state what that way was.

A. I kept them just as close on my place as I could. I kept them on the place and had a man looking after them.

Q. And managed them just as you and Chase had done?

A. That is the way Chase and I managed them.

Q. You continued the same practice you and Chase followed, with reference to handling your cattle?

A. I don't know that it was exactly the very same.

Q. There was no perceptible difference, was there?

A. Not that I remember, now.

Q. Now, is it not true that you just turned them loose and let them go at will?

278 A. No, sir; I watched my cattle very close.

Q. Is it not true you did not keep them together and drive them from one part of your range to the other, from time to time?

A. I simply tried to keep them on the place.

Q. Is it not true you did not drive them back and forth, from one place to the other, but fixed some place where you kept them, and let them scatter from there?

A. They were up and down the cañons, and my help were on the hills and about there, looking after them.

Q. Do you mean to say your help would also move them from place to place as occasion required?

A. I state that they looked after them all right, and rode around them; and if there was any got out, they drove them in again.

Q. Now, which cañon did you keep them in?

A. Well, most of the time they were in Rail and Saltpeter cañons.

Q. When did you keep them in Coal cañon or Lacey cañon?

A. They were in there, most of the time, in the winter time.

Q. Do I understand you to say that you used Rail and Saltpeter for a summer range, and Coal cañon rather for a winter range?

A. Not absolutely, no, sir. In the winter there were more down in about Coal cañon, and in them hills on that side and on the bottom, because we had our crops off then.

Q. Is it not true that nearly all the cattle came down on the Vermejo river in the winter time?

A. Some of them old cows got pretty smart. They could almost tell when a man was getting his crops off.

279 Q. They led the other cattle down with them, didn't they?

A. I don't know whether they led them. Some of the other cattle came down.

Q. The great mass of them come down, didn't they?

A. Well, yes, a big lot of them came down.

Q. Some of the others, in the winter time, would come from the range and go beyond it, wouldn't they?

A. I told you some of my cattle would get off sometimes.

Q. When was it you had the conversation with Mr. Pels and Whigham, in Raton?

A. I cannot fix the date exactly. It was after they had commenced working on the fence.

Q. How much of the fence was built when you had that conversation?

A. That I don't know. I don't think the fence was done.

Q. Had you been up to see it?

A. I had seen some of it; yes, sir.

Q. The place you saw, the fence was up, was it?

A. I can't tell you whether I saw the fence before or after I talked with these men.

Q. How much country did that fence enclose?

A. Well, they took in most of the land on Saltpeter that I own and part of Rail cañon; then it went over towards the Caliente, and I don't know how much there was in it.

Q. Took in a good many thousand acres, didn't it?

A. Yes, sir.

Q. You stated you had a conversation with Mr. Whigham about $125.00; will you state when you had that conversation—in which he claimed lease money for running the cattle in the Van Bremmer?

A. It occurs to me that conversation was in 1880, and it took place at Cimarron.

280 Q. When did you and Chase quit running those cattle in the Van Bremmer cañon?

A. We did not run them there long. We sold them to Dr. South.

Q. What year did you put them in the Van Bremmer?

A. Must have put them in there in 1872 or 1873.

Q. What year did you sell them to Dr. South?

A. I don't remember.

Q. How long did you keep those cattle?

A. We did not sell them all. We sold Dr. South the bulk of the herd, and each of us reserved some out of the herd.

Q. About how many years was it after you put them in the Van Bremmer you sold them to Dr. South?

A. I can't remember.

Q. Was it more than three years?

A. Well, sir, I can't remember.

Q. Can you state whether it was more than six years, or not?

A. Well, sir, it is pretty hard for me to tell. I have been studying about it, and cannot remember it. I would like to make a statement in regard to my memory, if you will allow me. When I was a boy and went to school, the teacher would give me a slate and pencil, and I would study over a problem until I could not tell anything about it; and I would throw that old slate down, and, when I went to bed, in the night the thing would come to me clearly, and I could see right through it. Now, you have got me right in that same fix now.

Q. Then your memory is bad from time to time?

A. It is overwork that does it.

Q. Now, didn't Whigham ask you for the pay for some vegas, which had been rented in the Van Bremmer cañon to cut grass on?

281 A. I will tell you about that. I have studied a good deal about that. I would not be certain but he did.

Q. And that was the $125.00 he asked you for?

A. I could not tell you. It seems to me that the vegas were mixed up with this matter.

Q. Didn't he also ask you for the pay of the 9,600-acre pasture?

A. I don't think he did.

Q. Did he ever ask you for it?

A. I don't think he did. Chase paid that, all along.

Q. You didn't pay him what he asked you, anyhow, did you?

A. No, sir; I told him he better go to Chase; that I did not think it was right, anyhow; that he had made an over-estimate.

Q. Then the amount was not absolutely determined that was to be paid?

A. I don't remember much about it, only I know we had land leased there. Mr. Chase attended to it.

Q. What did Pels say to you when you spoke to him about that fence that was being built around that beef pasture—didn't he state to you that that was not your property; that it belonged to the company, and for that reason he was building the pasture there?

A. He didn't say that. He indicated that I was doing wrong.

Q. He indicated to you that that was not your land, but belonged to the company, didn't he?

A. The only way he did was to kind of straighten up, this way, and say to me: "I understand you are objecting to our building this beef pasture."

Q. You understood him to indicate that he claimed the right to build it there?

A. He just spoke in that way; and I kind of laughed.

Q. Who else was present?

282 A. Just he and I, in the office there.

Q. In Raton?

A. Yes, sir, in his office.

Q. He commenced the conversation, did he?

A. Yes, sir.

Q. He didn't say anything more after he said he understood you were objecting to his putting the pasture there?

A. My recollection is, he waited for my reply, which I gave.

Q. And he made no answer to that?

A. Just at that moment Mr. Whigham stepped into the door, and he referred the matter to him.

Q. Did Whigham hear what Pels first said to you?

A. I could not say, because he was in the other room. I don't think he did.

Q. In what manner did he refer to Mr. Whigham, then?

A. When Whigham came in, he referred the matter to him just about this way: That I was there objecting to the building of the fence.

Q. You understood that the company was claiming the ground?

A. At that time I understood they were going to fence my land, or that they thought it was theirs and were going to fence it.

Q. You understood they were claiming that land as the company's land?

A. No, sir; I kind of think they were fencing it, thinking it was a good place to hold their beef.

Q. Didn't you understand at that time they claimed the land as belonging to the company?

A. At that time, I suppose, they thought it was theirs.

Q. You supposed that from the manner Mr. Pels spoke to you, didn't you?

283 A. It was the first time he had ever spoken to me in regard to that land, and I answered him as I told you.

Q. When did Mr. Pels become the general manager of the Maxwell Land Grant Company, so far as you know?

A. I can't remember just now.

Q. In talking to Morley, you told him that you had bought that land from Maxwell, the time you spoke to him about the survey?

A. Yes, sir.

Q. He told you he could not take that deed and survey the land?

A. I don't know whether it was three months, six months, or a year afterwards. It was after I saw the map he made.

Q. Then it was you asked him why he didn't survey it as you told him, and he said he could not take that deed and survey that land; that is about what took place, was it not?

A. He said just these words, as well as I remember. I asked him why he hadn't surveyed off that land as I told him; run around it as I told him; and his reply to me was that he did not believe any man in the world could take that deed and by it locate any land.

Q. What deed did he refer to?

A. He referred to the deed that was in my possession. I don't know whether he saw mine or not.

Q. The deed given to you by Maxwell intended to cover the land which you had bought, didn't it?

A. Yes, sir; he had reference to that.

Q. Where is that deed?

A. I have it.

Q. Have you it here?

A. No, sir.

Q. Where is it now?

284 A. At the hotel.

Q. Will you produce that deed here?

A. Now?

Q. Yes, sir, or as soon as you can. I would like that deed, if the court please.

Mr. JONES: We will object to the introduction of the deed, as improper cross-examination.

Mr. CATRON:

Q. The contract with Chase was simply to take care of some cattle with you on shares, that first contract made in 1868?

A. It was to take care of these cattle, and twenty sows, and farm some for three years.

Q. How was he to pay you for the cattle; percentage of increase, or how?

A. The contract was for him to make the old stock good and give me half the increase.

Q. When do you say you made that contract with Chase?

A. It was in May, 1868.

Q. What time in May?

A. From the 1st to the 15th or 20th.

Q. Where were you staying at the time you made that contract with Chase?

A. I just staid around there with my friends.

Q. You stated that in 1880 the grass was bad on that range. During the time the grass was bad, didn't the cattle range at large and stray away?

A. A good many of them died. They didn't run very far.

Q. Some of them went pretty far?

A. They could not travel; they were very thin.

Q. Then it was not necessary to herd them?

A. I saw two-year-old steers die up until July.

Q. Didn't they die more for want of water than for grass?

A. No, sir; it was for pasture.

285 Q. Water was scarce, too, up in those cañons, was it not?

A. It never has been, up in those cañons.

Q. If an animal has plenty of water, it will live on very little grass?

A. Rail cañon has got an abundance of water, and Saltpeter has good springs all along.

Q. Did you ever, individually, drive any cattle out of any one of those cañons; that is, any other cattle besides those you claimed?

A. Yes, sir.

Q. When?

A. Well, every year, more or less.

Q. You stated that Maxwell pointed out, with you, some boundaries. Where were you when he did that?

A. He was at the stage station in the Vermejo.

Q. How far is the stage station from your house?

A. About four miles.

Q. How far is it from that stone wall?

A. Well, I beg to change that. It is about four miles to the stone wall.

Q. What direction is it from the stone wall?

A. Well, I think it is a little west; I reckon it is a little west of north.

Q. Then, Maxwell did not come upon the ground and point out the different localities?

A. No, sir; not to me.

Q. When was that that he was at the stage station that you refer to?

A. Some time in June, 1868.

Q. About how late in June, 1868?

A. It is impossible for me to tell, exactly.

Q. You can't tell whether it was the commencement, the middle, or the end of the month, can you?

A. I think it was about the middle of June; maybe it was the 20th.

286 Q. It was between the middle and the 20th; that is your best recollection, is it?

A. Yes, sir.

Q. I will ask you to state where what is known as the O'Donnell farm is, with reference to that stone fence.

A. Well, that O'Donnell farm——

Q. You spoke something about those lands extending down to the O'Donnell farm; where is the upper part of the O'Donnell farm?

A. Them days, I knew right where it was, but I don't know how to explain it to you.

Q. Saltpeter cañon empties into the Vermejo, does it not?

A. Yes, sir.

Q. It empties in about four miles below that stone wall, does it not?

A. Yes, sir; somewhere along there.

Q. What I want to know is this: Where is the northern line of what is known as the O'Donnell farm, with reference to the mouth of Saltpeter cañon? I will say the western part, the upper part of the O'Donnell farm; the line that crosses the river and is further up the river; where is that, with reference to the place where Saltpeter cañon comes into the river?

A. Well, sir, that is up above. The northern line is above the

mouth of Saltpeter. The O'Donnell farm is the lower part of the purchase that was made by Curtis and Maulding.

Q. I mean the purchase in which the land you claim was included. It is below that, is it?

A. This O'Donnell farm is below my place, of course.

Q. You claim your line crosses Saltpeter cañon?

A. Yes, sir; on the top of the divide.

Q. You claim that because the water of Saltpeter cañon drains into the Vermejo river?

287 A. I claim it because I bought it from Maxwell.

Q. You claim it because you claim it is in the drainage of the Vermejo river, do you not?

—. ——.

Q. You claim it because your deed called for the drainage of the Vermejo river—because you claim your deed calls for the drainage of the Vermejo river—do you not?

A. If the court please, there is a matter here I have not been allowed to testify to, or none of my witnesses. It is very important we should explain the history of this purchase.

The COURT: Your business now is to answer the questions Mr. Catron is asking you.

Mr. JONES: The witness is trying to explain how he claimed Saltpeter cañon. He desires to explain that.

Mr. CATRON:

Q. You claim it because you claim your deed calls for the drainage of the Vermejo river, do you not?

A. I have already answered that.

Q. Now, Mr. Dawson, your southern line extended indefinitely to the east—cuts the Saltpeter cañon?

A. Yes, sir.

Q. And the mouth of Saltpeter cañon is below your southern line?

A. Yes, sir.

Q. Now, if your southern boundary line is extended indefinitely west, does it not cut the Van Bremmer cañon—if it keeps on going west?

A. It would; but I never claimed that.

Q. But would it not do that?

A. If it was continued on west, it would.

Q. Does not the Van Bremmer cañon empty into the Vermejo below your ranch?

A. Yes, sir.

Q. You say you paid Maxwell thirty-seven hundred dollars. When did you pay that to him?

288 A. Some time in May.

Q. Did you pay all of it in May?

A. All at one time.

Q. Is it not true that you paid seventeen hundred dollars afterwards?

A. No, sir; I paid it all at once.

Q. You paid that to Maxwell individually, did you?

A. Well, now, I did not.

Q. You did not—then why did you say you paid Maxwell $3,700.00?

A. If you will let me explain it, I will.

Q. Answer me, if you can. You have said you paid Maxwell $3,750.00; now you say you didn't pay him.

A. Well, sir, I paid the money to Mr. Curtis, and he gave it to Maxwell.

Q. Do you know that?

A. I suppose he did.

Q. Whom did you get your deed from, that was given to you by Maxwell?

A. The paper came through the mail, I think.

Q. And you received it, did you?

A. It came to me, and I received it along with the other mail matter.

Q. Are you certain it came to you along with other mail matter?

A. Yes, sir, I believe it did.

Q. When did you receive it through the mail?

A. It was some time in 1869.

Q. Early in 1869?

A. I could not be sure about that. It was some time in 1869.

Q. You said, previous to adjournment last night, that you received that deed from Maxwell by mail?

A. I don't remember whether it was handed to me by some one, or whether it came through the mail.

289 Q. If it came to you by mail, where did you get it out of the post office—at Vermejo?

A. I don't know now that it came by mail. I don't know what place.

Q. Don't you know who you got it from?

A. Of course, the deed was executed by Maxwell, but I did not receive it from him.

Q. You received it either through the mail or from some one with whom he sent it, did you?

A. Yes, sir, I suppose he sent it.

Q. Whereabouts were you when you received it?

A. I don't know. I think I was at home.

Q. If you got it by mail, did you get it yourself, or did somebody else get it?

A. I do not know.

Q. Look at this paper, and state if it is the same paper which you received either by mail, or from some one.

Mr. JONES, to the court: I desire to enter an objection now to this examination, because it is improper cross-examination, and because the plaintiff has produced all of its testimony-in-chief, and that this is not testimony in rebuttal, and because the deed has been produced under an order of the court, and it is improper for the court

to make such an order under the circumstances existing at the time, and because it is irrelevant, incom*incom*petent and immaterial, and cannot in any way bind the defendant or his claim of title.

Objection overruled by the court.
Exception reserved by Mr. Jones.

A. I think it is.
Q. Do you know whose writing that is at the top there?
A. I don't. It looks like Mr. Maulding's writing.
Q. You received this deed some time in 1869?
A. Yes, sir.
Q. You cannot remember when?
290 A. No, sir; I don't remember just exactly.
Q. You have had it in your possession ever since?
A. Yes, sir, or under my control.
Q. Did you hear the testimony of your son, given on the trial of this cause?
A. Yes, sir.
Q. Is this the deed that you showed him?
A. Yes, sir.
Q. Is this the deed that was shown to Morley when he went there to survey the property?

Objected to by defendant's counsel on the ground that it assumes that the deed was shown to Morley, when there is nothing in the testimony that bears out that presumption.
Objection overruled by the court.
Exception reserved by Mr. Jones.

A. I think I testified I did not know whether Mr. Morley was shown any deed.
Q. Didn't you state you thought your wife showed him the deed?
A. I don't know whether she did or not. She might.
Q. Is this the deed that Mr. Morley referred to when he said, in substance, that no one could take that deed and survey the land according to the terms of the deed?
A. I presume it was.
Q. You understood this was the deed referred to?
A. Yes, sir.
Q. Did you not state that Morley either had this deed, or a copy of it, when he was at your house?
A. I said I thought he had.
Q. That is your best recollection?
A. Yes, sir. At that time I was in bed with my leg broken, and I was very sick.
291 Q. The dam that is referred to in this deed is the same dam that has been testified to frequently in this case, is it not?
A. Yes, sir.
Q. That line crossing the river below the dam is the same line about where your stone wall is, is it not?
A. I don't understand you.

Q. This deed speaks about a line crossing the river to a cedar tree marked "L," near a wash on the right side of the ridge. Is that line the same one where your stone fence is made, or as near as you were able to judge it?

A. Yes, sir; it is.

Q. Do you know where that piñon tree marked "L," with a character like that which is described in this paper, which is described as being to the right of a ridge and near a wash—do you know where that tree is?

A. I saw that tree when I first went there; about the time when I went there.

Q. Tell just about where it was, to the best of your recollection.

A. It was on the southwest side of the Vermejo river, right near where the traveled road is up and down the river.

Q. The road that passes along by your house?

A. Yes, sir.

Q. On which side of the road was it—northwest or southeast side?

A. Close to the road, on the northwest side.

Q. About how far was that from the bank or current of the river?

A. I don't know. I never measured it.

Q. I only asked for your best judgment.

A. I think it was probably a little over one hundred yards.

292 Q. Is it about where the western or southern end or your stone fence is, or anyways near it?

A. Do you mean the southwest end of the fence?

Q. I want to know if the south end of your fence is somewhere near where that tree was, or is close to it.

A. The fence is, I think, about seventy-five yards out; the fence extends out towards the southwest, towards the tree, about seventy-five yards.

Q. But passes along by, or close to, where the tree was?

A. Yes, sir; right by it.

Q. Now, on this side of the river, at that time, did you find a pile of stones on an elevation, and near where there were some bushes? I will give you the exact description that I want: "A pile of rocks on a knoll, or elevation, with some bushes near thereto." Did you find that pile of rocks?

A. No, sir; I never saw it.

Q. Did you, or were you, ever shown the place where it was?

A. No, sir.

Q. You undertook to run your stone fence on the line between that tree and that pile of rocks, didn't you?

A. No, sir; I had a very prominent object. I had the mountain; that was my guide on either side.

Q. You had this deed in your possession at the time you built that fence?

A. I think I did.

Q. You have frequently claimed that, under this deed, you were entitled to the drainage of the Vermejo, between the dam and the stone fence.

Objected to by defendant's counsel, on the ground that it assumes that witness has claimed always that he was entitled to the land, under the deed, and the testimony does not bear it out.

Objection overruled.

293 Exception reserved by defendant's counsel.

A. There is a matter there that I have been kept from telling.

Q. Answer my question.

A. Yes, sir.

Mr. CATRON, to court: I will ask to introduce this deed in evidence.

Mr. JONES: We object to the introduction of the deed, for the reason the same is improperly introduced at the present time; for the reason that the plaintiff has closed its testimony-in-chief, and that the deed is not testimony in rebuttal; and for the reason that the defendant in this case is not bound by any of the recitals in the deed, or anything contained in the deed, as he is not relying upon the deed in this case; and that the introduction of the deed, as evidence, is incompetent, irrelevant and immaterial.

Objection overruled.

Exception reserved by Mr. Jones.

Mr. JONES, to court: I will further object, and except, because the deed is void upon its face, and contains no description of land which can be determined or located.

The interpreter here read the deed to the jury, and the same was marked Exhibit 1, and is as follows:

EXHIBIT 1.

This indenture, made this, the seventh day of January, in the year one thousand eight hundred and sixty-nine (1869), between Lucien B. Maxwell and Luz B. Maxwell, *née* Beaubien, of Mora county, Territory of New Mexico, of the first part; and John B. Dawson, of the same county and Territory aforesaid, of the second part:

Witnesseth: That the said parties of the first part, for and in consideration of the sum of three thousand seven hundred dol-

294 lars ($3,700), lawful money of the United States, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents (the receipt of which is hereby acknowledged), have granted, bargained, sold, aliened, remised, released, conveyed and confirmed; and by these presents, do grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part; and to his heirs and assigns, forever, all the land or ground now suitable for farming or cultivating purposes, in the valley or drainage of the Vermejo river, county of Mora, Territory of New Mexico, within the following boundaries, to wit:

Beginning at a certain dam at the head of a certain ditch at the right-hand point of rocks, from thence running down on the north

side of said river to a certain other pile of rocks, on a knoll or elevation, with some bushes near thereto; thence running very near southward across said river to a piñon tree to the right of a ridge, near a wash, which tree is marked with the letter "L;" thence running up said river on the south side to the place of beginning; containing about —— acres, more or less; together with all *all* and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And, also, all the estate, right, title, interest, dower and right of dower, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above-described premises, and every part and parcel thereof, with all the appurtenances thereunto belonging, or in anywise appertaining.

To have and hold, all and singular, the above mentioned and described premises, together with the appurtenances; unto the said party of the second part, his heirs and assigns, forever.

295 And the said Lucien B. Maxwell and the said Luz B. Maxwell, *née* Beaubien, for themselves and their heirs, the said premises in the quiet and peaceful possession of the said party of the second part, his heirs and assigns, against the said party of the first part, and their heirs, and against all and every person whomsoever, lawfully claiming, or to claim, the same shall and will warrant and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year above written.

L. B. MAXWELL. [SEAL.]
LUZ B. MAXWELL. [SEAL.]

($1.50 revenue stamp.)

Signed, sealed and delivered in the presence of—
CHAS F. HOLLY.
JESUS G. ARREU.

TERRITORY OF NEW MEXICO, }
County of Mora. }

Be it remembered, that on this, the 7th day of January, A. D. 1869, before me, Nestor Martinez, a justice of the peace, within and for the county and Territory aforesaid, personally appeared Lucien B. Maxwell and Luz B. Maxwell, his wife, *nee* Luz B. Beaubien, who are personally known to me to be the persons whose names are subscribed to the foregoing deed as parties thereto, and they severally, each for him and her self, acknowledged that they executed the same voluntarily, for the uses and purposes therein mentioned.

I further certify that she, the said Luz Maxwell, *nee* Luz Beaubien, was fully informed of the contents of said conveyance, and has confessed, on an examination, separate and independent from her said husband, that she executed the same voluntarily and without compulsion or the illicit influence of her said husband.

Witness my hand and date as above.

NESTOR MARTINEZ,
Justice of the Peace.

296 TERRITORIO DE NUEVO MEJICO, }
Condado de Mora. }

Yo el abajo firmado, escribano de la corte de pruebas del dicho condado, certifico que la presente escritura es en registrada en el Libro Segundo del referido condado, pag. 113, 114. En fe de lo cual pongo mi nombre y sello de la corte de pruebas en este officiana de mi carga hoy el dia 12 de Febrero, 1869.

[SEAL.] PABLO VALDEZ, *Escribanó.*

Q. What is your best recollection as to where you received that deed?

A. I think I have answered that. My recollection is that it come by mail, or by some one.

Q. If you received it by mail, at which office did you receive it—the post office at Vermejo?

A. I don't think they had any post office at Vermejo then, but the stage passed by there, and often brought a bunch of mail, and it was left there.

Q. How many people lived in the vicinity of Vermejo stage station; say, within a range of fifteen miles up and fifteen miles below on the Vermejo river, in 1868, or early in 1869, taking the stage road as the center, in the valley of the Vermejo?

A. Below where the stage station was, if there was anybody living below, I don't remember it. I lived there on the creek, and if there was any one above me, I don't remember it.

Q. Did Lew. Coleman live up above there at that time?

A. No, sir.

Q. When did Lew. Coleman go there to live?

A. Well, he did not live up there.

Q. He moved up there afterwards, didn't he?

A. He did not live there at the time you speak of.

297 Q. Was there any settlement above your place that they called the Vermejo settlement, in 1868 and 1869?

A. I don't think there was. There were a number of people settled in the Vermejo park, but it was lower than that.

Q. About when did these people settle in there? I mean the settlement that was at the place where Brigado Cordova, and a man named Cameron lived.

A. I think that Mr. Reed and Mr. Taylor, and some other people, came into the park in 1871 and 1872.

Q. Now, that place is what you call the Vermejo park?

A. Yes, sir.

Q. How far is it from that place up to the nearest settlement in the Vermejo park—the nearest house?

A. Well, I don't know, but I would say, to guess at it, about eighteen or twenty miles.

Q. Are there any settlements between your house and the Vermejo park, now?

A. Yes, sir.

Q. About how many people are there between your place?

About how many heads of families or different families and houses, between your house and Vermejo park?

A. I don't know how many neighbors I have up there. They are mostly Mexican people. They live pretty close together.

Q. There are some other ranches up above you, between you and Vermejo park, are there not?

A. Yes, sir; people have ranches that they live on.

Redirect examination by A. A. JONES:

298 Q. Mr. Catron asked you yesterday, on cross-examination, whether, if the west line of your rock fence extended indefinitely, it would cross the Van Bremmer cañon. Explain why it was that you did not claim the Van Bremmer cañon.

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved by plaintiff's counsel.

A. When I first came on the Vermejo, in the early part of 1868 or 1869, passing through, Mr. Curtis and Maulding told me that they had a contract with Maxwell.

Counsel for plaintiff objects to the witness stating what Curtis and Maulding told him.
Objection overruled by the court.
Exception reserved by Mr. Catron.

Q. Go on.

A. They told me they had a contract for a piece of land there, beginning at this dam, that has been described, running down to the river to the lower end of what was known as the O'Donnell farm, with all the drainage, with the water that flowed from between this dam and the lower end of the O'Donnell farm. They asked me if I wanted some of it. I studied a good while and said, "If you will let me have the upper part," which they agreed to. Now, I will get at the explanation: The Van Bremmer cañon empties into the lower end of the O'Donnell farm, but the Saltpeter empties in——

Mr. CATRON: We object to the witness stating anything about the Saltpeter cañon.

The COURT to witness: The question is, Why you didn't claim the Van Bremmer cañon. Go on and answer that question.

A. Because it was not a part of this drainage.

Q. The Van Bremmer cañon empties into the Vermejo below the line of the O'Donnell farm?

A. Yes, sir.

299 Q. Well, with reference to the lower line of the O'Donnell farm, where does the Saltpeter cañon empty?

A. It empties in on the O'Donnell farm.

Q. And Spring cañon?

A. It empties into the Vermejo below this rock fence.

Q. And above the lower line of the O'Donnell farm?

A. Yes, sir.

Q. And Rail cañon?
A. It empties in between the dam and the rock fence.
Q. And Coal cañon?
A. It empties in between the dam and the rock fence.
Q. And Lacey cañon?
A. It empties in below the rock fence; below the O'Donnell farm.
Q. You stated on your cross-examination yesterday that when Mr. Maxwell pointed out to you the boundaries of your land that you were down at the stage station, some miles away from your place?
A. Yes, sir.
Q. State whether or not you could see any prominent points on your place from where you were.

Objected to as leading by plaintiff's counsel.
Objection overruled by the court.
Exception reserved.

A. Yes, sir.
Q. You were asked on cross-examination whether or not, under that deed, you claimed the drainage of the Vermejo between the dam and the southern line mentioned in that deed, or the stone fence. I will ask you to describe in detail the drainage you do claim that deed calls for.
A. I claim from this dam that has been described to the
300 rock fence, with an extension to the east across Spring cañon and Saltpeter cañon to the top of the divide in the Saltpeter cañon, where the waters flow to the east and to the west. I also claim from the rock fence and extension to the southwest to the top of the divide crossing Lacey cañon, to the divide between Lacey cañon and Van Bremmer cañon.
Q. And how far north did this drainage extend?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved.

A. I don't know the distance.
Q. I mean with reference to the natural points there?
A. Well, it run round on that divide at the east end of Saltpeter, and on the divide between the head of Saltpeter, and around to the dam.
Q. On the west how far up did it extend?
A. Around the head of Lacey cañon, between Lacey and Van Bremmer to the head of Lacey, and then between Coal cañon and Van Bremmer to the head of Coal cañon.

Mr. CATRON: I ask to strike out that answer as improper and immaterial.
Motion overruled by the court.
Exception reserved.

Q. Now, I will ask you why the word drainage in this deed covered this land?

Objected to by plaintiff's counsel.

The COURT: You can answer why you concluded that the word drainage mentioned in the deed covered the land claimed by him in this suit.

Exception reserved by Mr. Catron.

A. This southern line down the creek, where the rock fence is, and this extension on either end, was the part I first spoke to these people about—if they would let me have it, I would take an
301 interest—Mr. Maulding and Curtis. The contract they had was for a block of land.

The COURT: You were asked to give your reasons why you claimed this word drainage, mentioned in the deed of conveyance, has embraced the land claimed by you in this suit. The question was, Why did you so conclude?

A. Because the drainage flowed into the dam and the lower end of the O'Donnell farm; and this block of land was the part that was set apart to me.

Mr. JONES: Did you have any conversation with anybody after you received the deed as to the meaning of that word drainage?

Objected to by plaintiff's counsel.

Objection sustained.

Q. Go ahead, if you have any other reason. I will ask you if there were any other reasons.

Objected to by plaintiff's counsel.

Objection overruled.

Exception reserved.

A. Curtis and Maulding told me that this whole drainage belonged to this block of land, and this was my part; and I talked with them often about it, and I talked with others. I talked with Maxwell, and Maxwell and myself were frontiersmen at this time when I talked with him at the stage station, and he observed that I did not get as much land——

Objected to, because that was six months before the deed was made.

Mr. CATRON, to the court: I move to strike out the last answer of the witness and the last question.

Motion overruled.

Exception reserved.

Mr. JONES: Mr. Dawson, do you know the purpose for which that tree was designated as a point there?

302 A. I asked Maulding why it was marked so, and he said it was marked to mean line.

On motion of counsel for plaintiff the answer of witness to last question is stricken out.

WITNESS:

A. I understood it to be line; to be the southern line.

Q. What was to be the extent of that southern line?

Objected to by plaintiff's counsel, because the deed shows plainly the extent of the southern line.

Objection overruled.

Exception reserved.

A. There was an extension from the east end, across Lacey cañon, across Saltpeter cañon to the top of the divide of Saltpeter cañon and the waters flowing to the east; and the other end, an extension from the rock fence, across Lacey cañon, to the top of the divide, between Lacey cañon and the Van Bremmer cañon.

Q. Do you know why that line was established there at all?

A. Yes, sir.

Q. Why?

A. To divide my property from the next property below.

Mr. CATRON: I object, and move to strike it out, because that contradicts the deed.

The COURT: He predicates none of his rights on that deed so far.

Objection overruled.

Exception reserved.

Recross-examination by T. B. CATRON:

Q. You have stated that that contract with Maxwell for a deed was with Curtis and Maulding. Did Dick Miller have anything to do with it?

A. He got part of the land.

303 Q. Just the same as you and Maulding did?

A. He and Maulding got a part of the land above, next to me, and a piece below.

Q. That was part of the land that was contracted with Maxwell about, which you have referred to?

A. Yes, sir.

Q. Did they enter into possession of some portion of the same block of land you say was contracted for?

A. Yes, sir.

Q. Do you know whether Miller and Maulding took their land together or not?

A. I think they did.

Q. Curtis took his separate, and you took yours separate?

A. Yes, sir.

Q. This was the division made between you parties yourselves?

A. Yes, sir.

Q. Now, within the limits of whose land, according to that division, does Saltpeter cañon empty?

A. It empties into what is known as the O'Donnell farm, and it belonged to Maulding and Miller.

Q. That is, in the division that fell to them?

A. Yes, sir.

Q. Now, within the limits of whose land did the Spring cañon empty, according to that division?

A. It emptied into the next tract below me, that was known at that time to belong to Maulding and Miller; that is my recollection.

Q. Is not the head of Saltpeter cañon considerable further north than the dam above your house?

A. I think it is some north, but I don't know how much.

Q. Going back to this matter I was asking you about, within the limits of whose land does the Lacey cañon empty, according to the division made between you parties?

304 A. It empties into that piece of ground that joins my land, or was known at the time to belong to Maulding and Miller.

Q. In the division between you, that tract of land where the Lacey cañon empties was given to Maulding and Miller?

A. All below this line.

Q. I mean the place where the cañon empties—that was given to Miller and Maulding?

A. Yes, sir.

Q. Rail cañon heads considerably further north than the dam at the commencement of your land, does it not?

A. Yes, it heads some north of it; I don't know how much.

Q. Coal cañon heads a considerable distance north of that dam, does it not?

A. Yes; but I don't know how far.

Mr. JONES:

Q. I will ask you whether there were lines established between all of you parties who claimed to have gotten any land under the contract?

A. Yes, sir.

Q. Have you frequently talked with all those people as to where those lines extended?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved.

A. Yes, sir.

Q. How were those lands divided up between the respective parties?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved.

A. The lines, respectively, were to extend from one side to the other straight across the creek, as near as they could make

305 them; to the top of the divide on either side, out as far as the water would flow or drain into the Vermejo river.

Q. Now, Mr. Dawson, the lines below you were straight lines—above and below each tract, except yours—were they not?

Objected to by plaintiff's counsel.
Objection overruled by the court.
Exception reserved.

A. Yes, sir.

Q. I will ask you to explain why it was that you claimed the part of these cañons north of your dam, or the north point of your dam, on the river?

Objected to by plaintiff's counsel.
Objection sustained by the court.
The COURT: That has been fully explained.

Q. What was the entire tract of land that was divided up between you people?

Objected to by plaintiff's counsel.
Objection sustained.
Exception reserved by Mr. Jones.

Testimony of Harry Whigham.

HARRY WHIGHAM sworn.

Direct examination by A. A. JONES:

Q. What is your name?
A. Harry Whigham.
Q. Where do you reside?
A. Raton, Colfax county, New Mexico.
Q. What position, if any, do you hold in The Maxwell Land Grant Company, the plaintiff in this case?
A. I am land commissioner of that company.
Q. How long have you been connected, in an official capacity, with the tract of land known as the Maxwell land grant?
A. Since March, 1872.
306 Q. Are you acquainted with John B. Dawson, the defendant in this case?
A. I am.
Q. How long have you known him?
A. I have known him since 1872.
Q. Where has he resided during that time?
A. On the Vermejo.
Q. On the tract of land we have been talking about here?
A. His residence is on that tract.
Q. Did you know W. R. Morley?
A. I did?
Q. What official capacity, if any, did he have with this tract of land known as the Maxwell land grant?
A. When I first knew him he was chief engineer of the Maxwell Land Grant and Railway Company.
Q. When did you first know him?
A. In March, 1872.

Q. What other positions, if any, did he hold under that company?

A. In 1873 he was elected vice-president and chief executive officer.

Q. How long had he been chief engineer?

A. I cannot speak as a matter of fact.

Q. Do you know from the records of the company?

A. I can speak about my understanding.

Q. How long did he remain with the company as an official?

A. Until 1875.

Cross-examination by Mr. T. B. CATRON:

Q. You say Dawson's residence is on the land in question. Do you mean he resides on all the land in question, or only a part of it?

A. On part of it.

307 Q. Where is his residence on this land—at what particular point?

A. It is on the southeastern side of the creek, or southwestern part of the creek; about three-quarters of a mile below the dam referred to.

Defendant rests.

Plaintiff's Rebuttal.

Testimony of Harry Whigham.

HARRY WHIGHAM sworn.

Direct examination by Mr. CATRON:

Q. When you were on the stand before, you stated you had been in the employ of the plaintiff. Do you know how long the plaintiff, as a company, has been in existence?

A. Well, I would like to amend my answer as to that, as the plaintiff has only been organized since 1880.

Q. Have you been employed by it ever since its organization?

A. Yes, sir.

Q. State in what capacity you have been employed by plaintiff since its organization.

A. I was in the employ of the Maxwell Land Grant Company, as assistant secretary, since 1880, but the present administrators of the estate is the board of trustees of the Maxwell Land Grant Company, and that was organized in 1888.

Q. What relation have you borne to them, if any?

A. Superintendent, first; afterwards, land commissioner.

Q. Prior to the organization of this company, plaintiff in this case, what employment, if any, had you in connection with the Maxwell land grant?

308 A. In March, 1872, I was employed by the Maxwell Land Grant and Railway Company.

Q. Is that the same company—that is, plaintiff in this case—or a different company?

A. That is a different company. I was employed by that company to do general office work, and in the month of April, 1873, I was elected secretary and treasurer *pro tem.*; and I held that position until I entered the employ of the Maxwell Land Grant Company.

Q. In the employ of which company was Morley, the gentleman about whom you testified when you were on the stand before?

A. The Maxwell Land Grant and Railway Company.

Q. His employment continued up to what date?

A. Until the fall of 1875, or the spring of 1876.

Q. In the employment which you had, in connection with the Maxwell Land Grant and Railway Company, from 1872 until that company ceased to have anything to do with the Maxwell land grant, state what and where your duties called you, with reference to the Maxwell land grant.

A. From 1872 to 1880?

Q. Until the Maxwell Land Grant and Railway Company ceased to have anything to do with the Maxwell land grant.

A. It was to keep the books of the company and assist the management.

Q. In that capacity, where did your duties call you, if at any other place than the headquarters of the company?

A. Over various parts of the property.

Q. State whether or not, from the time you first knew the Maxwell land grant, there has, or has not been, any representative of the company, for the time being, owning it, on the property or in charge of it.

309 Objected to by defendant's counsel, as incompetent and immaterial. The fact that any party was in charge of it can have no effect upon this particular tract of land.

Objection overruled by the court.

Exception reserved by defendant's counsel.

A. There has always been a representative of the company on the property.

Q. State whether or not, during the times that you have known it, the Maxwell Land Grant and Railway Company, or the Maxwell Land Grant Company, during the time each one of them owned the property, had any occupancy or possession of any part of it.

A. They had.

Q. How?

A. By selling it, by leasing it, by occupying it with their own animals.

Q. Did they have any house, or residence, or building on it, that they occupied?

A. They had a number of buildings in the town of Cimarron, and a number of ranch-houses scattered about on various parts of the property, built by themselves.

Q. Did the company itself, by its agents, occupy any of these properties, or not?

A. They did.

Q. During what period of time?

A. During the whole period I have mentioned.

Q. In speaking about the company, do you refer to both companies, or only one?

A. I refer to both companies.

Q. State whether or not you have any considerable acquaintance with the land embraced within the Maxwell land grant—the country embraced in it; if so, how you obtained that information and acquaintance.

Objected to by defendant's counsel as immaterial.

Objection overruled by the court.

Exception reserved by defendant's counsel.

310 A. I have intimate knowledge of all lands included in the out-boundaries of the grant, having traveled over these lands many times, both in pursuance of my duties to the company, and in hunting and fishing.

Q. Do you know the particular land in question in this suit?

A. I do.

Q. State whether you have ever been on it; if so, how frequently.

A. I have been up and down the Vermejo stream, both passing Mr. Dawson's house and stopping at his house, frequently, of late years; not so frequently in the earlier years. I have traveled over the other portions of the property every year or two.

Q. Are you acquainted with the people on the Vermejo, above and below Dawson's ranch?

A. I am.

Q. What is the extent of your acquaintance with the people residing on the Maxwell land grant?

A. I think I know them all, with very few exceptions.

Q. How did you obtain your knowledge of these people?

A. In addition to the offices I have filled, with regard to the grant, I was receiver for two and a half years; and both at that time and at other times it has been my duty to visit the settlements, in transacting business between them and the company.

Q. During what years were you receiver?

A. From the early part of 1885 to September, 1887.

Q. As such receiver, of what property did you have charge?

A. I had charge of all the lands in New Mexico for the Maxwell Land Grant Company.

Q. How frequently have you been to Dawson's house, on this property?

311 A. Up to within ten years ago I was only at his house a few times. Within the last three or four years I have been there quite frequently.

Q. When you were at his house, was he generally present?

A. Yes, sir.

Q. Did you have conversationsw ith him, at that time?

A. Yes, sir.

Q. Did he, or did he not, know the relations you bore to the land and the company, as well as your position of receiver, at the time you were holding it?

A. He did.

Q. Did you ever have any talk or conversation with him, with reference to the lands that he claimed or owned, at the Vermejo, the place of his residence?

A. I never did.

Q. Did you ever have any conversations with any one, with reference to the lands Dawson claimed or owned, at the Vermejo, prior to the commencement of this suit; that is, residing in that vicinity or within the limits of the grant?

A. No, sir. I would like to amend my answer: Never with any one living in the vicinity of Dawson's residence. I have talked with others connected with the company, in reference to this matter.

Q. Did you ever hear or understand from any one, that Dawson's claim—that is, Dawson's land—extended to the ridges which are described in the plea, which has been read here before you on several occasions?

A. I never knew what Dawson's claim was, as set forth in these pleadings, until I heard it in this court-room, at this term of court.

Q. You heard the testimony Dawson gave here, did you?

A. I did.

312 Q. You heard his testimony with reference to $125.00, which he said you had demanded of him for rent—did you hear that?

A. Yes, sir.

Q. State whether or not you ever claimed of him $125.00 for rent; if so, what you claimed it for.

A. I asked him for the rent of a small vega of, possibly, sixty or seventy acres, situated on the Van Bremmer, which had been fenced in by Mr. Chase, which I understood Dawson and Chase were interested in together.

Q. Did you, or not, ever ask him for rent for any lease which may have been made to him or Chase for grazing cattle on the Van Bremmer?

A. Do you allude to that portion that was fenced in? There was a large piece, called the Horseshoe pasture, that was fenced in.

Q. You heard Dawson's testimony about the $125, and that it was for a lease which Chase had some time in the seventies, for ranging cattle in the Van Bremmer?

A. There never was such a lease made, and I never demanded any money from him.

Q. If there had been a common or general understanding, or general talk, that Dawson's ranch extended to the tops of the ridges, which have been read here to the jury, or to the various witnesses, on the east of Saltpeter cañon and north of the head of Saltpeter and Rail cañon, and to the west of Coal and Lacey cañon; state whether or not you were in such position, or had sufficient information with reference to these matters, and communication with the

people, that you would have certainly known it. Whether from your information with reference to affairs generally on the grant, you would have known of it, or heard of it?

Objected to by defendant's counsel as being leading and suggestive, and assumptive, and mere opinion evidence.

Objection sustained by the court.

313 Exception reserved by plaintiff's counsel.

Q. If it had been open and notorious that Dawson held possession of the property in question, and owned the same up to the ridges, which have been described to you, would you have heard of it?

Objected to by defendant's counsel.

Objection sustained.

Exception reserved by plaintiff's counsel.

Q. What means had you of knowing whether it was an open and notorious fact that Dawson owned the property to the top of the ridges mentioned?

Objected to by defendant's counsel.

Objection overruled by the court.

Exception reserved by defendant's counsel.

A. By intimate knowledge of the country, and intimate social relations with the people living in that vicinity, and, in fact, generally with the people who lived on the lands of the Maxwell grant.

Q. Had any such information ever reached the company, would you have known it?

Objected to by defendant's counsel.

Objection sustained.

Exception reserved by plaintiff's counsel.

Q. What, if anything, did you understand were the limits of Dawson's land at that place?

Objected to as immaterial, and calls for mere understanding.

Objection sustained.

Exception reserved by plaintiff's counsel.

Q. Have you any information, or did you know in any manner, the extent of the land claimed by Dawson, up to the year 1883?

Objected to by defendant's counsel, on the ground that he has answered the question by stating he never knew what Dawson claimed until the trial of this case.

Objection overruled.

314 Exception reserved by defendant's counsel.

A. There has always been in the office of the Maxwell Land Grant and Railway Company, in the office of the receiver, and in the office of the Maxwell Land Grant Company, a map, designating the boundaries of Dawson's tract, surveyed by W. R. Morley, chief

engineer of the Maxwell Land Grant and Railway Company, in 1871, and this represented the boundaries which I supposed were claimed by Mr. Dawson.

Q. Did that represent the boundaries up to these various ridges read here in the plea?

A. No, sir; it surveyed the land strictly in the valley of the Vermejo, with a little land at the mouth of Rail cañon and Coal cañon.

Q. Did you ever have any conversation with Morley, with reference to the lands embraced in Dawson's claim?

A. I don't remember having had any conversation with him.

Q. I will ask you this question: Whether you have ever passed up or down Rail cañon and Saltpeter cañon?

A. I have.

Q. When was the first time you ever went up and down these cañons?

A. In 1880, I believe, was the first time I went to Rail cañon. I have driven across and up on the Saltpeter cañon several times since that year.

Q. Have you ever been in Coal cañon?

A. Once.

Q. What year was that?

A. That was, I think, in 1878.

Q. The time you were in Rail cañon, did you observe any animals pasturing in there?

A. I saw none. I drove up the cañon looking for iron ore; I noticed no animals.

Q. How far up the cañon did you drive from the river?

315 A. I would think it was three or four miles.

Q. Did you see any persons in that cañon, when you went up there, that seemed to have charge of it, or holding cattle in there, or anything of that kind?

A. No, sir.

Q. When was the first time you were in Saltpeter cañon?

A. I think it was about the same time.

Q. Did you, or did you not, observe any animals ranging or grazing in that cañon, at that time, or any other time, when you were there?

A. I don't remember.

Q. You don't remember whether you saw any, at any other time, there, or not?

A. My impression is that, in the various times I have driven along Saltpeter, I have seen three or four scattering head of cattle, but seen very few.

Q. State whether or not you ever saw any one up there who seemed to be looking after animals, or in charge of that property.

A. No, sir, I never have.

Q. When you went up Coal cañon, what year was that?

A. I think it was in 1878.

Q. State whether or not you observed any animals in that cañon, on that occasion.

A. I went up there to look at some coal, and did not notice any animals.

Q. Did you see anybody up there looking after animals, or taking care of animals, or in charge of the property, up there?

A. No, sir; I did not.

Q. Did you find anybody up there in that cañon, at all? If so, what were they doing?

A. No, sir; I didn't see any one.

316 Q. Did you find any one up either one of the other cañons? If so, what were they doing, when you were up there?

A. No, sir; I never saw any one.

Cross-examination by A. A. JONES:

Q. I believe you say you never were in Coal cañon but once?

A. That is my recollection.

Q. How far up the cañon did you go that time?

A. A short distance only.

Q. About how many miles?

A. I would not think I was over a mile from Dawson's house.

Q. Did you drive up, or how did you go?

A. I have forgotten whether I walked or rode horseback; I went one way or the other.

Q. Were you ever up Rail cañon?

A. Yes, sir.

Q. When?

A. It was in 1880, to the best of my recollection.

Q. How far up Rail cañon did you go?

A. We drove up quite a distance; I should think three miles.

Q. You were in a vehicle, were you?

A. Yes, sir.

Q. Have you ever been up Rail cañon since?

A. No, sir.

Q When were you up Saltpeter cañon?

A. Well, since the year 1880 I have crossed Saltpeter cañon, and traveled up and down it, several times.

Q. When was the first time?

A. I have stated; in 1880.

Q. Was that the time you went there hunting for iron ore?

A. I was looking for iron ore in Rail cañon.

317 Q. What was the occasion of your visit to Saltpeter cañon, the first time?

A. I remember, I was driving across from Otero, I think it was, to Dawson's house—or to the Vermejo, at least—and that I missed my way in Saltpeter, and traveled up and down it, to be sure which way I should take.

Q. How far up did you go?

A. I would think it was not to exceed three miles from its mouth.

Q. How far from the road that comes from Raton did you go up the cañon?

A. My understanding is, you come into the Saltpeter, drive down the Saltpeter a ways, and then branch off down to Dawson's house. The road from the prairie winds down the Saltpeter for a ways.

Q. How far up the cañon did you go from the place where the road strikes the cañon?

A. I would think from a half to a mile.

Q. When were you up Saltpeter, the next time?

A. I have been there several times since then. I think that was three or four years afterwards, perhaps.

Q. And the next year you were there was about 1883 or 1884?

A. Yes, sir.

Q. What was the occasion of your visit there, at that time?

A. I was traveling.

Q. Was there any public road up that cañon at that time, in 1884?

A. There was a road?

Q. Was there a wagon road?

A. That is my understanding. I certainly traveled on the road.

Q. Where did that road lead to?

A. Well, it took me out about Crow creek. It was the
318 road leading from Dawson's, and the settlements thereabouts, to the railroad, and came into the road from Cimarron to Otero about Crow creek.

Q. In what part of Saltpeter cañon did that road run?

A. I judged that it was two or three miles from the mouth of Saltpeter.

Q. Did it go through what is called Saltpeter gap?

A. I think it did.

Q. When were you there the next time?

A. These are the only times I remember.

Q. Did you ever ask Dawson as to what he claimed over there?

A. No, sir.

Q. Now, Mr. Whigham, you stated that Morley's map had been up in your office all these years, showing his survey of Dawson's place. Are you sure that there was no land included in that survey but the valley land of the Vermejo?

A. Nothing more than I stated in my answer to Mr. Catron.

Q. I probably did not get the substance of that.

A. I stated that there was some of the valley at the mouth of Rail cañon, and on the other side of the Vermejo, of Coal cañon, surveyed in that map.

Q. Do you know — far up these cañons that survey went?

A. From the river, I would think it was surveyed up Rail cañon, perhaps three-quarters of a mile; and, in Coal cañon, perhaps not quite so far.

Q. Are you sure it did not include any of the foot-hills?

A. It was not so designated on the map. This survey was from the dam down to the stone wall.

Q. Do you know from what data Morley made that survey?

A. I understood it was to survey the lands as deeded by Maxwell to Dawson.

319 Q. Had you ever read Dawson's deed?

A. Not until a few years ago. At that time I had occasion to send a clerk down to the recorder's office, to have all the deeds that Maxwell had ever given, copied into one general book; and, at that time, I noticed the description of those lands.

Q. Do you remember in what year that was?

A. I think it must have been about 1881.

Q. Did you ever go up on the Vermejo river, above John B. Dawson's ranch, during the time that you were receiver?

A. Yes, sir.

Q. Do you remember having a conversation at that time with Gus Dawson, as to what his father claimed?

A. No, sir.

Q. Do you remember selling to Gus Dawson, some land up in that vicinity?

A. I remember a sale to Gus Dawson, about the end of my receivership—about the time the Maxwell Land Grant Company was organized. I have forgotten the time the sale was made, but I remember the sale.

Q. Did you have any conversation with him at that time, as to his father's lines?

A. No, sir; not that I remember of.

Q. Do you remember how much land that survey of Morley's included?

A. Twelve hundred and sixty acres.

Testimony of Levi S. Preston.

LEVI S. PRESTON sworn.

Direct examination by Mr. CATRON:

Q. What is your name?

A. Levi S. Preston.

Q. Where do you reside?

A. Maxwell City, Colfax county, New Mexico.

320 Q. What is your occupation?

A. Civil engineer.

Q. How long have you been engaged in the business of civil engineering?

A. Since 1885.

Q. What is your age?

A. Thirty, past.

Q. In whose employ are you now?

A. The Maxwell Land Grant Company.

Q. In what position?

A. As engineer in charge.

Q. In charge of what?

A. In charge of the irrigation department and general surveys.

Q. As a civil engineer, do you have knowledge of surveying?

A. Yes, sir.

Q. Are you acquainted with John B. Dawson, the defendant in this case?

A. Yes, sir.

Q. How long have you known him?

A. Since the fall of 1887, or spring of 1888.

Q. Do you know the place on the Vermejo river where Dawson resides?

A. Yes, sir.

Q. Have you ever been there?

A. I have.

Q. Did you ever survey any land at that place?

A. Yes, sir.

Q. When did you do that?

A. In May, 1888, I located the Vermejo ditch line. The headgate is located on Dawson's ranch.

Q. When did you survey that land at Dawson's ranch?

A. At different times. In November, 1888, and in March and April, 1892, and in June, 1889.

321 Q. What lands at Dawson's ranch did you survey?

A. In 1888 I located the stone wall.

Q. What did you do in March or April last?

A. I made a topographical survey of the valley of the Vermejo between Dawson's stone wall and the dam.

Q. In making that survey, did you make any plat of it?

A. I did.

Q. Have you that plat here?

A. I have.

Q. Please exhibit it.

(Witness here exhibited plat.)

WITNESS: I have two plats.

Q. What does this tract represent?

A. The title I have given it is, "The map of Dawson's ranch and adjacent territory."

Q. The squares on that map, designated by numbers, what do they represent?

A. The subdivision of the land into sections, according to the Government survey. This is a mile square.

Q. What does the blue line on that map represent?

A. The Vermejo river.

Q. Which direction does the top of that map represent?

A. North.

Q. This blue line commencing in section 32, passing through 27, 34, 35, 2, 3, 11 and 14, represents what?

A. Represents the Vermejo river.

Q. Whereabouts, if it is represented on that map, is the dam above Dawson's house?

A. On the section line between sections 10 and 11, about eleven hundred feet south of this section corner.

322 Q. Whereabouts on that map is the stone wall represented?

A. This is the stone wall, crossing the southern portions of sections 13 and 14.

Q. What does the green painting on that map represent?

A. That contains the explanation, "Lands under ditch."

Q. That is to say, the lands on either side of the Vermejo river that are under ditch?

A. Yes, sir.

Q. State whether or not all that land which is under ditch is cultivated.

A. The greater portion of it; not all of it.

Q. Is there any land represented on that map which is not under ditch and which is cultivated?

A. Yes, sir; there is a small portion at this point; as I remember, corn had been planted a few times.

Q. How about the land at the mouth of Coal cañon, represented on that map—was that under ditch, or not?

A. Yes, sir; under an old ditch, which has been abandoned since I have been in the country. It is not cultivated at present.

Q. Point out to the jury where the ditch which is on the west side of the river runs. Just describe it.

A. The head-gate is at an old dam at the upper end of what I understand is Dawson's ranch. This is the line of the old ditch, but it has been abandoned for some years. (Indicating on map.)

Q. State whether there is more than one ditch on the east side of that land.

A. Yes, sir; there is two ditches in operation, and the third ditch has not been used for several years.

Q. Where is the ditch that is taken out highest up the river taken out?

A. It is indicated on the map as "Dane's ditch."

323 Q. This western ditch, how is it indicated on the map?

A. "Dawson's ditch."

Q. What is the other ditch which is on the map designated—by what name?

A. "Vermejo ditch."

Q. From which one are the lands irrigated which are indicated by the green coloring—from the Dane ditch?

A. Some of this land in this bottom will raise crops without irrigation, if I am not mistaken.

Q. What use or purpose is the Vermejo ditch?

A. To irrigate the Vermejo system, on the Maxwell land grant.

Q. Is it to irrigate any of the lands indicated by the green color on this map?

A. No, sir; it has never been used for that purpose.

Q. Is there a cañon called Rail cañon illustrated on this map?

A. Yes, sir.

Q. Designate it, from the Vermejo river up to its head.

A. Here is the mouth or forks of Rail cañon, one-quarter of a mile above the stone wall. The general course up the cañon is nearly north, a distance of six miles from its mouth to its head.

Q. What does this yellow color represent, on this map?

A. Valley line, or irrigable land that might be irrigated, if ditches were provided.

Q. Are Spring cañon and Saltpeter cañon represented on this map?

A. No, sir.

Q. Is Coal cañon represented on the map?

A. The lower portion of it.

Q. Point out where it is, to the jury.

324 A. The mouth of Coal cañon is some six or eight feet above the stone wall. It comes in a general course from the northwest to the southeast. It runs outside the map at this place (indicating); and here is a note on the map: "Full cañon head is about two miles northwest."

Q. About how much further north is the head of Rail cañon than the old dam above Dawson's house?

A. Nearly five miles.

Q. Which is farther north, the head of Coal cañon or that old dam?

A. Head of Coal cañon.

Q. Will you state about how much farther north it is?

A. It is a mile or a mile and a half.

Q. Take the other map—what does that map represent? Referring to Exhibit No. 2.

A. The Beaubien and Miranda, or Maxwell, grant.

Q. Point out the land where Dawson's ranch is situated.

A. This green portion represents the land under ditch or cultivation, and Dawson's residence.

Q. Point out the Vermejo river, if it is represented on that map, and state how it is represented.

A. Here is the head-waters of the river; there is the name "Vermejo;" it is marked "Vermejo" on the map.

Q. Now, if Saltpeter cañon is represented on that map, point it out, and state by what words it is represented.

A. "Saltpeter cañon." That is the mouth of it, below the old stage station.

Q. Is it marked "Saltpeter cañon"?

A. Yes, sir.

Q. About how many miles long is that?

A. About thirteen miles.

Q. If it heads north of the old dam in question, state about how far north of the old dam it heads.

A. About seven miles.

325 Q. If Spring cañon is represented on that map, point it out. How is it marked on the map?

A. "Spring cañon." It empties into the river about a mile and a half below the stone wall.

Q. How long is Spring cañon?

A. Four or five miles.

Q. Is the head of Spring cañon north or south of the old dam in question?

A. Nearly due east.

Q. Where is Coal cañon on that map—how is it marked?
A. Marked "Coal cañon."
Q. How long is it?
A. Four miles.
Q. Is Lacey cañon represented on that map?
A. Yes, sir, by the words "Lacey cañon."
Q. How long is it?
A. Three, or possibly four miles, to the head of it.
Q. Where does it empty into the Vermejo?
A. About three-quarters of a mile below the stone wall.
Q. Where is the Van Bremmer cañon?
A. It is indicated here, as "Van Bremmer cañon."
Q. Does it empty into the Vermejo?
A. Yes, sir.
Q. About how far below the stone wall?
A. Between seven and eight miles.
Q. Point out Red river on that map.
A. Here is the head-waters of Red river, on the State line of Colorado and New Mexico; general course, to the east for thirty miles, and then takes a southern direction, through the grant.
Q. According to the scale on this map, the land indicated by the green color, state whether that is the same amount of land that is represented on the other map.
A. Yes, sir.
326 Q. This scale is how much—a mile to the half inch?
A. Yes, sir.
Q. What is the scale on the other map?
A. One thousand feet to the inch.
Q. At the northern or eastern end of the old dam, state what object, if any, there is there, or near it.
A. You refer to the topography of the country?
Q. Yes, sir.
A. Why, the rocky bluffs come down close to the river; farther back are the mesas.
Q. Rocky bluffs come down where?
A. A rocky ledge runs down close to the river, at this point, and the ground rises back to high mesas.
Q. What kind of rock is it—describe it—that comes down near to that dam?
A. I would say it was a sloping ridge, with sandstone ledges on either side of it: a gradual slope from the river, and runs back about a quarter of a mile, to a bench, I would call it.
Q. What is the appearance of that, as to being rounded, pointed, square, or how?
A. Comes rather to a point, perhaps one hundred feet across.
Q. How close is it to the nearest point to the dam?
A. Between two and three hundred feet.
Q. Is there any other point there where there is a high ledge of rocks?
A. This is a very prominent point at this place.
Q. What is that marked?

A. Rocky point.
Q. What is the point you first mentioned?
A. It is also marked rocky point.
Q. What are the words on this side of the river, there?
A. "Old dam."
327 Q. How far is the last point you have designated, marked rocky point, from the old dam?
A. About three thousand feet.
Q. You did not measure the exact distance?
A. I got this point by triangulization.
Q. How does that land, from the dam to the base of that rocky point, three thousand feet off, rise—how much?
A. About six hundred feet above the river; it would be a slope of one to four.
Q. The point of rocks that is near to the dam—you say, about three hundred feet—how high is the base of that from the dam?
A. Well, possibly ten or fifteen feet.
Q. How far back does that ledge, or point of rocks extend, that you can trace it with your eye?
A. For five or six hundred feet. It strikes what I call a bench, along here; a piñon bench.
Q. State whether or not the blue and green coloring on that map represents all the lands that are capable of cultivation or irrigation in that vicinity; that is, below that dam and above that wall? I mean the yellow and green.
A. The green represents the land now under ditch, all of which could be cultivated. The yellow represents the lands that could be cultivated, if water was supplied for the purpose of irrigation.
Q. Have you ever been up Coal and Rail cañons?
A. Yes, sir.
Q. What is the formation along up Coal cañon?
A. For the first three-quarters of a mile there is an open cañon, nearly level bottom, of one to three hundred yards in width. Above that, I have never been—to the extreme head of Coal cañon. I have been up three miles, about. From the mouth, about the first three-quarters of a mile, the cañon is narrow and rocky; sides
328 covered with piñon timber, and running back to high mesas, or ridges, on the sides.
Q. Why is that cañon, if you know, named Coal cañon?
A. Because coal crops out on the bank of the arroyo.
Q. To what extent does coal crop out, up there in that cañon?
A. I don't think I have seen a larger vein than eighteen inches or two feet, myself.
Q. How many veins have you seen there?
A. I never examined it for that purpose. I noticed coal at two different points.

Cross-examination by A. A. JONES:

Q. I will ask you if you surveyed the entire length of Rail cañon.
A. Of the western branch of it, yes, sir.
Q. Which do you call the western branch of it?

A. I retraced this township line, and from this cañon I have meandered the valley of the cañon up to this point here (indicating on map), and there two forks turn up to the east in section 19, I have never been to the head of.

Q. Have you been to the head of any of these other forks out here?

A. Not to the extreme head, except this. The heads of these cañons are visible from the valley.

Q. All you did was simply to run up this line along the botton of the cañon?

A. And measure the width of the cañon once every 1,000 or 1,500 feet, take bearings from various points, at all the principal points of the mesas and heads of the cañons; also run this township
329 line through to this point, and this line across here; also run these section lines down to this point, as stated in my first statement.

Q. Your idea of that country is gotten from those surveys that you made?

A. Yes, sir, and repeated observation and residence.

Q. How often have you been up in that country?

A. Repeatedly since 1888.

Q. Have you been up there for any other purpose than for the purpose of making these surveys?

A. I lived at Dawson's house for seven months in the summer of 1890.

Q. I see you have mountains indicated in that map. Did you locate these mountains on that map from actual survey of the mountains?

A. Yes, sir; at certain points run lines across them.

Q. Do you mean to say that that map is accurate in every particular as to these boundaries?

A. I would say that the principal points are located by triangulation.

Q. In other words you located one point here, another there, and another over there, and another there, and up there, and you filled in all the balance by guess-work?

A. So far as I was able to judge by my eye and observation.

Q. But you didn't take any measurements except those you have mentioned?

A. No, sir.

Q. Now, do you mean to say that in a mountainous country you can take observations from one to two miles apart and make a correct topographical map of the country?

A. No, sir; I didn't do it in this case, either.

Q. How long were you doing the field-work?

A. This work has been distributed over four years.

330 Q. How long were you in making the surveys from which you made that map—I mean when did you survey Rail cañon?

A. In November, 1888, and in April, March and April, 1892.

Q. What did you survey in 1888?

A. We traced this township line all the way through on this line, later on, the same fall, to this point. We traced an old line, you see here, and run up the cañon to this point, and up this cañon.

Q. What was that old line you say you retraced?

A. What I understand as "Morley's survey," of 1871.

Q. How far up Rail cañon does it go?

A. To about this point, a little below this section line, something like a half a mile north of the dam.

Q. Did you find Morley's point up there?

A. No, sir.

Q. Did you find any of his points?

A. Yes, sir; found a pile of stones, I supposed was his points; marked as his in his notes.

Q. He ran his line up Rail cañon, how far north of the old dam?

A. Less than one-half a mile; a little more than a quarter of a mile.

Q. He run his survey up farther than you have that yellow color there, didn't he?

A. Yes, sir.

Q. Now, you haven't been over that country, up in there, or in here, along this line, since 1888?

A. I was up Rail cañon, to nearly the head of it, in April, 1892.

Q. When were you across this country here, last?

A. In November, 1888.

Q. Have you ever been over that line since that time?

A. I have been to these corners in the cañons.

Q. In Rail cañon?

331 A. I have been to the corners on that line in Rail cañon since. I have been in the valley portion of it several times; this portion of it.

Q. This country in here, have you ever made a survey of that, where it is marked "mesa"?

A. I have crossed the top of this country, and located its principal points by triangulation, every one, half a mile or less.

Q. Then, you know nothing more about that country around there, in those points, than the mere location of the points?

A. And what I can see between them.

Q. A man in a mountain country cannot see very well, can he, unless he is up on top of some high point?

A. I can pick that point out from the town of Springer, twenty-five miles away.

Q. But you can't stay in Springer and see all the country between that point and Springer, can you?

A. No, sir.

Q. You triangled that from the valley, on down below, didn't you?

A. Yes, sir.

Q. You say that was about six hundred feet higher than the valley. Now, standing down in the valley, in the face of a mountain six hundred feet high, you can't see much of the surrounding country, can you?

A. You can see more of the country on the mountain slopes, before you, than you could if it were level.

Q. You can see up the mountain slope, where there is just one mountain; but if there are any ridges intervening you cannot see the valleys, can you?

A. Certainly, if there are ridges to cut off your view, you cannot see behind the ridges until you get in some other position.

Q. Now, from the indication of this map, Mr. Preston, I
332 would judge that that was all one solid mountain around in here. Is that all just one continuous high mountain around in all this country here?

A. You evidently don't understand the explanation of these markings. These are supposed to represent the abrupt slopes, with bench land between; these longer lines represent very steep slopes.

Q. Now, in a place like that (indicating on map), what does that represent?

A. There is bench land there; comes up in abrupt bluffs, runs back nearly level, and then up again.

Q. Do you know how far it is from that one to that one (indicating marks on the map)?

A. I have not measured every square foot of the country, and know only the principal and important points.

Q. Were these things put on here from scale, at all—these feathery indications here?

A. To some extent; they were put on from recollection and judgment and knowledge of the country.

Q. Now, you don't meam to say that you made any measurements of these little slopes at all, do you?

A. Not outside the certain lands which I have described.

Q. Then, as a matter of fact, all these feathery indications which you have here are put on there just from your general impressions of that country?

A. My general knowledge and inspection and observation.

—. ——.

A. Very few of these lower ridges have any fertile soil.

Q. As a matter of fact, wherever there is any dirt found on the sides of these hills it is fertile?

A. In a purely sandstone country, as it is there, I would say no. In certain parts, level pieces of ground in some of the side cañons may be found patches that could be cultivated.

333 Q. Did you ever make a survey over the top of the ridges?

A. I have crossed many ridges.

Q. I mean these ridges in there?

A. No, sir.

Q. Do the tops of these divides rise with the general elevation of the country?

A. Please make your question a little more explicit.

Q. I will ask you whether the tops of the divides, up about the heads of these cañons, are considerably higher than they are down on the river?

A. These valley ridges rise out and slope all the way from the valley to the main mesa. These mesas are table lands like this desk here, abrupt face or cap rock and then a steep slope down to the creek.

Q. I see you have written the word mesa on this map out here (indicating), is all this mesa country out here?

A. Mesa is the only term for it. It is because it is comparatively level, rising gradually as you go back.

Q. You mean to say that between Rail cañon and Saltpeter cañon there is a mesa there?

A. Several mesas in there.

Q. Well, the land is quite fertile on these mesas, is it not?

A. At places there are pine trees.

Q. And the land is fertile, is it not?

A. I would judge so from the looks of the trees.

Q. I believe you stated you located that Vermejo ditch in 1888?

A. Not as it is on this map. I located the first line, but not as it was afterwards constructed.

Q. I will ask you who made that plat (handing witness a small plat)?

A. My wife did the greater part of the work on that map, so far as I am able to judge.

334 Q. Did you do any of it?

A. I marked it off with a lead pencil and she copied it in.

Q. She merely made the tracing from your pencil work?

A. Yes, sir.

Q. Was that a correct map?

A. Yes, sir.

Q. What were these red lines put there to indicate?

A. The explanation of that is found on the line.

Q. "Morley's survey of 1871?"

A. Yes, sir.

Q. Now does that include any land except valley land strictly?

A. It includes considerable bench land, lower slopes of mesas. It includes at one point in here some good land.

Q. And takes in some rocky points?

A. Yes, some rock ledges.

Q. What does that red line up there indicate?

A. The line between the dam and this high mesa, or point of rocks, which Dawson pointed out to me as the point of rocks which he claimed was a part of his northern boundary.

Q. It is marked on here, line claimed by J. B. Dawson?

A. Yes, sir.

Q. What are these feathery lines down in below the red line to indicate?

A. The southern slope of this rock point that runs down to the dam.

Q. What are the distances represented by these square lines on this small map?

A. The heavy lines represent the division of the section, the

dotted lines division in the quarter section; the heavy line divides sections two and three.

335 Q. How far is it, for instance, from that point to this point (indicating on map)?

A. One-half a mile.

Q. Each of these squares is a half a mile?

A. Yes, sir.

Q. Read these descriptions along there and state what they are. Begin at the dam.

A. It says, "To the southwest corner."

—. ——.

A. It says here in the notes on this map, "Thence south to the southwest corner; thence east forty chains to the approximate corner to sections 2 and 3, 10 and 11. The west end of dam, the initial point of J. B. Dawson's tract, bears south 11 chains, 21 links, and west 2 chains, 74 links distant, and 51 links, 35 chains, intersect line claimed by J. B. Dawson as his northwest boundary, and runs north 51 degrees east from the dam to point of rocks."

Q. That distance, 51 chains and 35 or 36 links, whichever it is, is the distance of what line?

A. The distance from the southwest corner of a certain tract of land, which I was surveying for A. G. Dawson, east of this line between the dam and point of rocks.

Q. On this map it states that the boundary runs north 51 degrees east from the dam to a point of rocks. Do you mean to say that that point of rocks up there that you refer to takes that course from the dam?

A. That is the bearing between the dam and point of rocks.

Q. If you wanted to go from the dam to the point of rocks, you would take that course, going on a straight line?

A. To make a straight line, yes, sir.

Q. How did you measure the distance from that dam to that point of rocks?

A. By triangulation.

336 Q. Could you see the top of the point of rocks from the valley below?

A. No, sir.

Q. I think you stated it was three thousand feet?

A. Approximately. It is between 2,900 and 3,000, as I recollect it.

Redirect examination by T. B. CATRON:

Q. State, Mr. Preston, (showing witness map,) above this yellow coloring on this map, in Rail cañon, what is the character of the cañon, as to being narrow from there on up to the next cañon (indicating on map, Exhibit No. 2)?

A. It is narrow, or has steep slopes from the arroyo, back, practically, all the way.

Q. How are these slopes, as to being rocky or not?

A. They are covered with broken masses of sandstone and boulders.

Q. Above there, where you have some yellow coloring on the eastern branch, how wide is the land, that you have designated by that yellow coloring, up in the bottom?

A. From two to five hundred feet of apparently level bottom in the cañon.

Q. How are the sides there after they leave the valley, that is from two to five hundred feet wide?

A. Covered with oak brush to a great extent, and rolling hills, rather than cañon slopes.

Q. How is that western branch?

A. The character of that is practically the same, and there is possibly a narrow strip in there that might have been colored yellow on this map. It is very narrow.

The maps were here offered in evidence by Mr. Catron, marked Exhibits 1, 2, 3, and 4.

337 *Testimony of John M. Brackett.*

JOHN M. BRACKETT sworn.

Direct examination by Mr. CATRON:

Q. What is your name?

A. John M. Brackett.

Q. What is your age?

A. Fifty-two.

Q. Where have you resided during the last twenty-four years?

A. I have resided in New Mexico since 1873, and in Tennessee before.

Q. Where have you resided in New Mexico since 1873?

A. On the Vermejo, in Colfax county.

Q. Are you acquainted with John B. Dawson, the defendant in this case?

A. Yes, sir.

Q. Are you acquainted with the tract of land known — the Maxwell grant?

A. Yes, sir.

Q. Is the place where you resided in or out of that tract of land?

A. It is in it.

Q. How far do you reside from the residence of John B. Dawson?

A. Ten miles, more or less.

Q. Above or below him?

A. Below him.

Q. How long have you been residing at that point where you reside now?

A. About four years.

Q. Before you went there, where did you reside?

A. Ten miles above Dawson.

Q. On the Vermejo?

A. Yes, sir.

338 Q. Are you acquainted with the ranch at present occupied by John B. Dawson as his residence?

A. Yes, sir.

Q. Do you know a cañon there called Rail cañon, that comes in a short distance below his house, on the east side of the river?

A. Yes, sir.

Q. Are you acquainted with a cañon still further to the east than Rail cañon, known as Saltpeter cañon?

A. Yes, sir.

Q. Do you know another cañon, between Rail cañon and Saltpeter cañon, named Spring cañon?

A. Yes, sir.

Q. On the east side of the river, the same side Dawson's house is on, do you know a cañon called Coal cañon?

A. Yes, sir.

Q. The cañon a little further down the river than Coal cañon, called Lacey cañon, do you know that?

A. Yes, sir.

Q. Have you been over the country which includes or takes in these cañons?

A. Yes, sir.

Q. How often, or frequently?

A. Well, I could not say just how often.

Q. Has it been many or only a few times? State how many times, more or less, that you have been over it.

A. Only half a dozen times, more or less.

Q. During what years were you over that country? That is, during what period of time, if you can state the period of time? State from what year to what year.

A. From 1874 to the present time.

Q. How many times were you over it from 1874 to 1883?

339 A. Perhaps a half dozen times, more or less.

Q. State whether, during that period, you were ever in Rail cañon, and to what extent you were ever in it.

A. Just rode through the cañon.

Q. Across it, or up and down it?

A. Up and down it.

Q. Can you tell any particular year that you were in Rail cañon?

A. I don't know that I could.

Q. But, between 1874 and 1883, you were in there, were you?

A. Yes, sir.

Q. State what you observed in that cañon at that time, as to there being any animals or cattle there?

A. I have seen cattle and horses both, in there.

Q. Are you acquainted with the brands of John B. Dawson?

A. I know his brand.

Q. Do you know the brand of any other people in that section of the country?

A. Not very many.

Q. State, if you know, whose horses, and cattle those were that you saw there in those cañons, or in that cañon?

A. Some of them were Dawson's and some were other people's.
Q. What were they doing there?
A. They were grazing.
Q. Anybody with them?
A. I did not see anybody with them.
Q. Did you see anybody around about that cañon that seemed to be handling or taking care of the cattle there?
A. I did not.
Q. How many times have you gone through Rail cañon during those years—Rail cañon itself?
340 A. Not very many times—not over three times, perhaps.
Q. During each of these times, state whether you observed cattle there.
A. I remember seeing cattle in there each time I went through there.
Q. What do you remember as to whether the cattle belonged to one individual, or more than one individual?
A. As I remember, they were cattle belonging to different people.
Q. How many horses did you observe in there?
A. Not very many. Not taking any notice of the number, I could not say the number I did see.
Q. What part of Rail cañon did you see most of the cattle in?
A. Near where the springs are in the cañon.
Q. How far from Vermejo?
A. Probably three miles, more or less.
Q. How far up the cañon did you go, on either one of these occasions?
A. I rode through the cañon.
Q. Clear up to the head?
A. Yes, sir.
Q. After you got above the springs, did you observe any cattle?
A. A few cattle above.
Q. Whose were they?
A. I don't remember just whose they were.
Q. Did you ever go through Saltpeter cañon?
A. Yes, sir.
Q. How high up on it did you go?
A. I traveled the cañon from one end to the other.
Q. Between the years 1874 and 1883?
A. Between those years; yes, sir.
Q. How many times did you go clear through the cañon?
341 A. I don't remember how many times through Saltpeter.
Q. Once?
A. Yes, sir.
Q. Did you observe cattle, in going up and down the cañon, then?
A. Yes, there were a few cattle in there.
Q. Any horses?
A. Yes.
Q. Any hogs?
A. I don't remember seeing any hogs.

Q. How many horses, more or less?

A. A dozen head, more or less.

Q. What were the horses and cattle doing in that cañon when you saw them?

A. Running loose; grazing.

Q. Anybody with them, taking care of them, or looking after them?

A. There was nobody with them.

Q. Did you observe anybody around about there that seemed to be looking after the cattle?

A. I didn't see anybody.

Q. How far up Saltpeter cañon did you see these?

A. On out to the head of it.

Q. Whose were those cattle, if you know?

A. I don't know.

Q. Do you know any one that owned any of them?

A. I don't remember that I do.

Q. Did you know the custom that existed among cattlemen in that vicinity, between 1874 and 1883, as to holding ranges and ranging cattle?

A. The cattle run loose on the ranges, so far as I know.

Q. What was the custom in that country as to the persons having particular ranges for their cattle?

A. Men claimed certain parts of the range as their range, or as their part of the range.

342 Q. What did they do with that range which they claimed?

A. I don't know that they done anything with it. They had a few head of stock on it.

Q. What did they do with reference to keeping their cattle on these ranges, if they did anything?

A. They did not keep them all on these ranges. They would scatter.

Q. Well, how did they get the cattle to their ranges when they would scatter?

A. During the branding season they would turn the cattle towards the ranges, after they were done brandings, if they belonged in the mountains.

Q. Just brand them and start them in the direction of their ranges?

A. Yes, sir.

Q. Was that the general custom that prevailed there.

A. That is the way I understand it. That was the custom, as known to me. I was not in the cattle business myself.

Q. Have you been acquainted with the people since 1874 up to the present time? Have you been extensively acquainted with the people around Dawson's ranch or range, living within eight or ten miles of it?

A. Yes, sir.

Q. Do you know whether there ever was any understanding in that community that Dawson's lands extended to the top of the

divide, reaching north of the heads of Rail and Saltpeter cañons and east of Saltpeter cañon?

A. I did know it.

Q. Did you ever know of such talk in the community?

A. I have heard such talk, yes, sir.

Q. Since when?

A. Since I came to the country.

343 Q. When did you first hear it?

A. Since 1874 or 1875, I heard it first.

Q. You heard it was claimed that his boundaries went there?

A. That was claimed by Dawson; yes, sir.

Q. What was the general understanding in the community as to whether his land went there or not?

Objected to as being immaterial by defendant's counsel.

Mr. Catron:

Q. If you know whether there was any understanding in the community as to where his lands went?

Objected to by defendant's counsel.

Objection overruled.

Exception reserved by defendant's counsel.

A. I don't know what the community had to say about it.

Q. I will ask you whether or not it was not generally understood that all that land through there was Government land, between those times that you have mentioned?

Objected to by defendant's counsel.

Objection overruled by the court.

Exception reserved by defendant's counsel.

A. Yes, sir.

Q. Did you ever go into the Caliente cañon?

A. Yes, sir.

Q. State whether or not you ever saw any of the defendant's cattle over there?

A. Yes, sir.

Q. What were they doing?

A. They were ranging.

Q. State what quantity of them you noticed over there.

A. I could not say as to the number.

Q. Did you see anybody about them, taking care of them or driving them back?

344 A. Only at the round-ups.

Q. Now, you say you have been in Coal cañon. How many times have you been in that cañon?

A. don't remember of going through Coal cañon but once in my life. It is very rough, and I went straight through there on horseback.

Q. About what time was that?

A. In 1886 or 1887, I think.

Q. Did you observe any cattle in there at that time?

A. Very few at the head of the cañon.
Q. Did you know whose cattle they were?
A. I did not.
Q. Do you know whether they were Dawson's cattle or not?
A. I do not.
Q. What were they doing there?
A. They were grazing.
Q. Anybody around them or about them, taking care of them, herding them, or moving them?
A. I didn't see anybody.

Cross-examination by A. A. JONES:

Q. In what business were you engaged during the time you lived above Dawson's place?
A. I farmed a little.
Q. I think you said you didn't own any cattle, yourself.
A. I was not in the cattle business. I did not own any cattle.
Q. You never worked with cattle on the ranges, did you, Mr. Brackett?
A. No, sir.
Q. Do you remember the first time you went up Rail cañon?
A. I don't remember the date.
345 Q. What was the occasion of your going up there, when you did go?
A. I simply rode through the cañon because there was a trail, and I could go home as quick as I could other ways.
Q. You were just traveling from one point to another, for the purpose of going over the distance?
A. Yes, sir.
Q. You were not making any particular observations of the surrounding country, or what cattle were there, were you?
A. No, sir.
Q. How many springs are there in Rail cañon?
A. I don't remember but the one. There may be more.
Q. Well, I believe you stated that you were up Rail cañon about three times; not over that. What was the occasion of your being there at other times?
A. Traveling through the cañon.
Q. And, at these other times, you made no particular observation of what was going on around the country?
A. No, sir; I had no interest in it.
Q. Well, how many trips do you remember making in Saltpeter cañon?
A. I don't remember how many.
Q. Do you think, more than two or three?
A. Three or four trips, more or less.
Q. What was the occasion of your being there during these times?
A. It suited my convenience to ride through the cañon.
Q. Just riding through, were you?
A. Yes, sir.

Q. In traveling through Saltpeter cañon, you never made any particular observation as to the animals that were in there, did you?

346 A. No, sir.

Q. I think you stated that you were up in Coal cañon once; what was the occasion of your being up there?

A. I rode through the cañon.

Q. Simply passing through the cañon?

A. Yes, sir.

Q. Well, Mr. Brackett, in passing through these cañons, or along any one of them, can you see any great amount of land that is claimed by Dawson?

A. Very little.

Q. I believe you stated you saw some of Dawson's cattle up on the Caliente. Do you remember what particular brand of his cattle they were?

A. I am not acquainted with the brands.

Q. Do you know whether these same cattle were the ones that formerly belonged to John B. Dawson's father?

A. Possibly they were.

Q. You stated that the people in that country thought that that was Government land. Did Mr. Dawson ever claim that it was Government land?

A. No, sir; not that I know of.

Q. It was generally understood and considered, up there among the people, that Dawson claimed to own the land within his boundaries there himself, was it not?

A. I heard he had bought the land from Maxwell.

Q. And that that included these cañons that have been named over to you, did it?

A. I don't know what it included.

Q. It was generally talked there that it included those cañons, was it not?

A. I don't know whether it was generally talked or not. I have heard it talked. I don't know how general it was.

347 Q. You have heard people talk that Dawson claimed to have bought the land within the drainage of these lands from Maxwell, didn't you?

A. I have heard it talked; yes, sir.

Q. I believe you stated that the cattlemen up there, since between 1873, when you went there, and 1883 or 1884, did not keep all their cattle on their respective ranges.

A. Yes, sir.

Q. Well, now, they did riding of lines, didn't they, and endeavored as much as they could to keep them on their ranges?

A. I don't know; I was not in that business.

Q. You were not out on the ranges?

A. No, sir.

Testimony of Celso Chaves.

CELSO CHAVES sworn.

Direct examination by T. B. CATRON, Esq.:

Mr. JONES, to court: I would like to ask this witness some questions. I understand he has been in the court-room during the progress of the trial.

Mr. JONES, to witness: Have you been in the court-room during the trial of this case?

A. I have not been in the court-room during the progress of the trial.

Q. Not at all?

A. I have walked in the room, but I have walked out again soon after. I have not staid in the room at all.

Q. Were you not sitting here in the court-room during the time some of the witnesses were testifying in this case?

A. I was here a little while yesterday; but I went out soon after, when I discovered it was not proper for me to remain.

348 Q. Mr. Maulding was testifying at the time, was he not?

A. A witness was on the stand. I don't know who he was.

Q. You sat back there about fifteen or twenty minutes, didn't you?

A. About five minutes, I think.

Q. You didn't take any note of the time you were there?

A. No, sir.

Mr. JONES, to court: I object to this witness testifying.

Objection overruled by the court.

Exception reserved by Mr. Jones.

The COURT, to witness: You didn't hear anything the witnesses testified to, did you?

A. No, sir; nothing at all that I remember particularly.

Q. Do you remember anything that the witness swore to?

A. No, sir.

Mr. CATRON to witness:

Q. What is your name?

A. Calso Chaves.

Q. Where do you reside?

A. In Raton.

Q. How long have you resided there?

A. I have been living there about six months.

Q. Where did you live before you went to Raton?

A. I lived on the Vermejo.

Q. At what place?

A. At a place called "Elkins."

Q. Before you went to Elkins where did you reside?

A. Lived in Trinidad.

Q. Before you went to Trinidad where did you live?

A. In Mora county.

349 Q. Do you know John B. Dawson?

A. Yes, sir.

Q. Do you know where he lives?

A. Yes, sir.

Q. How far did you live from him when you were up there on the Vermejo?

A. About fifteen or sixteen miles, more or less.

Q. Are you acquainted with his place, where he resides?

A. Yes, sir.

Q. Have you ever been there?

A. Yes, sir.

Q. How often?

A. I have been there a few times. One summer I worked a few months for him.

Q. Ever work for anybody else in that neighborhood? If so, for whom?

A. Yes, sir; for Mr. Lacey.

Q. How far was Lacey's place from Dawson's?

A. About a mile; three-quarters of a mile, perhaps.

Q. How long did you work for Mr. Lacey?

A. For about three years, during the summer season.

Q. What were you doing?

A. Working at the ranch, on the farm, and sometimes out in the country.

Q. What were you doing out in the country?

A. Hunting for his animals sometimes.

Q. What were you doing for Dawson?

A. Working at the ranch, in the house and about the house.

Q. Do you know a cañon there called Rail cañon?

A. Yes, sir, I do know it a little.

Q. Do you know a cañon called Saltpeter cañon, to the east of Dawson's house?

350 A. Yes, sir.

Q. Do you know Spring cañon?

A. I don't know which one is called Spring cañon.

Q. Do you know Coal cañon on the west side of the Vermejo river?

A. Yes, sir.

Q. Do you know the cañon called Lacey cañon?

A. Yes, sir.

Q. Have you ever been in these cañons?

A. Yes, sir; once or twice, I remember.

Q. How many times have you been in Rail cañon?

A. Once, I think; I don't remember well.

Q. What were you doing there?

A. The time I was in Rail cañon, I was hunting animals of Jose Cruz Lobato.

Q. Do you remember what year it was you were in Rail cañon?

A. It seems to me it was in 1885.

Q. Did you discover any animals in that cañon?

A. Yes, sir.
Q. Did you know the brand of Dawson?
A. The one he uses on his horses; not the one he used on his cattle.
Q. Do you know whose animals those were you saw in the cañon?
A. They were animals of different brands.
Q. How many animals did you see in that cañon?
A. Some places I saw quite a number.
Q. You say there were different marks on them?
A. Yes, sir.
Q. Were you ever in Saltpeter cañon?
A. Yes, sir.
Q. What were you doing in there?
A. I worked about three months in Saltpeter.
Q. What were you doing?
351 A. I was cutting posts.
Q. When was that?
A. Three years ago, I think.
Q. Were you ever in Saltpeter cañon, before 1880?
A. No, sir, I think not.
Q. Did you ever pass through that country before 1880, in the Saltpeter and Rail cañons?
A. No, sir, I don't remember.
Q. Did you discover any animals in Saltpeter cañon?
A. Yes, sir; cattle and horses.
Q. How many were there, as to being of the same mark, or different marks and brands?
A. Of different brands.
Q. Was there anybody with them?
A. No, sir; I never saw any one with them.
Q. See anybody with those over in Rail cañon?
A. No, sir.
Q. How were those animals running that you saw there in those different cañons—alone, bunched up, or scattered?
A Scattered in bunches.
Q. For whom were you cutting these posts you say you found in Saltpeter cañon?
A. For Mr. Whigham.
Q. For the company or Mr. Whigham?
A. For the Maxwell Company.
Q. How long did you say you were occupied in cutting these posts?
A. For about three months, I think.
Q. Anybody ever speak to you about cutting them, or tell you not to cut them, or prohibit you from cutting them?
A. Yes, sir.
Q. Who?
A. Mr. Dane.
352 Q. Anybody else?
A. No, sir.

Q. Dawson ever speak to you about that?
A. No, sir.
Q. Were you ever in Coal cañon?
A. Yes, sir.
Q. How often?
A. Three or four times, I think.
Q. During what years did you work for Lacey?
A. Either in 1878 or 1879.
Q. What times was it you were in Coal cañon?
A. In 1885, I think.
Q. Did you observe any cattle in there?
A. Yes, sir.
Q. How were they, as to being of the same marks and brands, or different marks and brands?
A. Of different brands.
Q. How were these cattle, ranging together or scattered?
A. Scattered.
Q. Anybody in charge of them?
A. No, sir; I never saw anybody with them.
Q. Did you ever go up through Lacey cañon?
A. Yes, sir.
Q. When did you first go into Lacey cañon?
A. It was during the years I worked for Lacey, either in 1878 or 1879; I forget which now.
Q. How often were you up in Lacey cañon?
A. Various times; whenever they sent me up there to hunt up some animals.
Q. Did you discover any animals up there?
A. Yes, sir.
Q. How far up did you discover any animals in Lacey cañon?
A. All the way up in the cañon I saw animals in different places.
353 Q. Whose animals did you discover up near the head of it?
A. Of different brands; I could not tell you who the ones were, sir.
Q. Discover any of Lacey's there?
A. Yes, sir.
Q. Anybody else's whom you knew?
A. Yes, sir.
Q. Whose?
A. Pat. Lyons'.
Q. What others?
A. And several other brands; the brand of the two ems. I think they belonged to Mr. Frank Curtis.
Q. When you were working for Mr. Dawson, did he have any cattle at the ranch?
A. Yes, sir.
Q. What were they?
A. Milch cows.
Q. Have any other cattle, besides milch cows?

A. Yes, there was some other cattle there.
Q. Where did they range?
A. He turned them up in the cañons.
Q. Would they come home every night?
A. Yes, sir.
Q. How would they turn them up—turn them up the same cañon every day?
A. Yes, sir; from what I remember, I used to see them turn up in the same cañon.
Q. Which cañon was it?
A. Coal cañon.
Q. Did they drive any of them across the river, to the east side?
A. During the time I was there, I didn't see any driven across the river.
Q. How many of those cattle were there?
A. A few; about fifteen or twenty.

354 Q. Do you know what was the custom, if any, amongst cattlemen, between 1874 and 1880, in that vicinity, as to running cattle?

Objected to on the ground that it is not shown that there was any custom.
Objection sustained.

Q. Was there any custom among cattlemen as to the manner of running cattle and holding ranges, in that vicinity, between 1874 and 1883, or up to the present time?
A. From what I remember, they used to turn them loose on the ranges, and used to gather them up in October, or on the round-ups; that is, the Americans used to do it.

Counsel for defendant moves to strike out the answer, as not responsive to the question.
Motion overruled.
Exception reserved by defendant's counsel.

Q. If you know, state how the cattlemen did as to their ranges—keeping or holding ranges—in that vicinity.
A. In common, as far as I could see, the animals of different owners were ranging there.
Q. State whether or not ranges were divided up amongst men, and each man had a range.
A. No, sir, I can't state that; I don't know.

Cross-examination by A. A. JONES:

Q. When did you first know Mr. Dawson?
A. It must have been in 1873 or 1874, I think.
Q. Where did you reside at that time?
A. On the Vermejo.
Q. Up above Dawson's place, fifteen or sixteen miles?
A. Yes, sir.
Q. How long did you reside up there?

355 A. Nineteen or twenty years, I think.

Q. From 1873, nineteen years would be 1892, would it not?

A. I think so.

Q. Well, you haven't lived there any of this year, have you?

A. No, sir; not this year.

Q. How long has it been since you lived up above him?

A. It is nearly a year.

Q. Then, from 1873 to about a year ago, you lived fifteen miles above Dawson's place, did you?

A. Yes, sir; fifteen or sixteen miles.

Q. But, during all these years, you lived at the same place, did you, up to a year ago?

A. Yes, until last year.

Q. What were doing up there?

A. Farming and ranching.

Q. You were not a cattleman, were you?

A. No, sir.

Q. You worked on a farm, did you?

A. Yes, when I was at home, I used to work at the farm. I worked at different occupations, for different men.

Q. You never worked at cattle, did you?

A. No, sir; only when I worked for other men, I did.

Q. You never went on the round-ups, at any time, did you?

A. Yes, sometimes, I did.

Q. When was the first round-up you ever went on?

A. About the year 1885 or 1886. It was during those years.

Q. For whom did you go upon the round-ups?

A. I was at that time working for Juan Cruz Lobato.

Q. What outfit did you work with?

356 A. I did not travel with the outfit. I simply attended the round-ups, where they were holding the cattle, and remained a few days at a time.

Q. You never actually worked with the outfit?

A. No, sir.

Q. You just came to the outfit, and remained a day or two, to see what was going on?

A. Yes; simply to see if I could find any of the animals I was after.

Q. Who was the boss of that outfit?

A. I don't know, sir.

Q. Do you know Zenus Curtis?

A. Yes, I know him well.

Q. Was he boss of the outfit?

A. He was boss of some of the round-ups. I don't know whether we was at that time, or not.

Q. Was he boss at the time you were there?

A. I think not. I don't know.

Q. Where was the round-up, at the time you visited it?

A. Sometimes at Agua Caliente; sometimes at Van Bremmer; also, at Valle la Piedra.

Q. Where is that place?

A. On the Vermejo river, above the head of Van Bremmer cañon.

Q. After the other people made the round-up, then you went to the round-up and looked into the herd, to see if any of Lobato's cattle were there, did you?

A. Sometimes, when they were near the place, we used to go to the round-ups.

Q. But you never went out to help them?

A. No, sir.

Q. When was the first time you were down at Dawson's place?

A. In 1874 or 1875.

Q. What did you go there for, the first time?

357 A. The first time I went through there I was going to Cimarron.

Q. Just traveling through?

A. Yes, sir.

Q. When was the next time you were there?

A. Several times; from that time on. I could not tell you how many times.

Q. Most of the times you were there you just traveled through there?

A. Yes, up to the years 1885 and 1886; that is when I went to work for Mr. Lacey.

Q. Then you went to work for Mr. Lacey in 1885 or 1886?

A. Yes; I don't recollect which year.

Q. And you were never up Lacey cañon, were you, except during the time you worked for Lacey?

A. That was all.

Q. The occasion of your going up there was to get the milk cows, was it not?

A. And I also went after some horses, sometimes.

Q. How far above the forks of the cañon did you go?

A. To a good distance up in the cañon.

Q. Did you go clear to the head of the cañon?

A. No, sir.

Q. Do you know where the forks are in that cañon?

A. No; I do not.

Q. You didn't go up that far?

A. Yes, I did go up to where the branches branch off the cañon.

Q. And that was about as far up the cañon as you went, was it?

A. I think I went up farther than that.

Q. How far above the forks did you go?

A. Up through the cañon, and as far as the edges of the mesas?

358 Q. Did you go clear to the head of the cañon?

A. No, sir.

Q. Do you know where the wagon road is, up that cañon?

A. No, sir; I don't remember.

Q. You didn't go up that far?

A. I might have gone. I don't recollect of any road being there.

Q. Which one of these forks did you go up—the left or right hand side?

A. The one on the left side.

Q. Do you know who the owner of that brand of cattle known as the two-em brand is?

A. Yes, sir.

Q. Who is it?

A. Frank Curtis.

Q. Where was his range; do you know?

A. At Ojos Calientas.

Q. When was it you saw some of that brand of cattle in the Lacey cañon?

A. It was in 1886 or 1887.

Q. How many did you see?

A. I could not tell you how many, but I saw a few.

Q. There was two or three, wasn't there?

A. I think so.

Q. Are you sure that that was the brand that was on them?

A. Yes, sir; two ems.

Q. What time of year was that?

A. In the summer.

Q. In the latter part of the summer?

A. I could not tell you what part of the summer it was. I was working for Lacey, and he used to send me out for animals.

Q. Do you remember the day you went up there?

A. No, sir.

359 Q. What time of day did you start up there?

A. Late; after I had finished my work about the house, and taken my breakfast.

Q. Did you go up the left-hand fork of that cañon?

A. No, sir; I did not.

Q. Well, when did you first work for Dawson?

A. I think it was the year after I worked for Lacey.

Q. That was about 1887 or 1888, then, was it not?

A. Perhaps it was about that time.

Q. Well, prior to that time that you went to work for Lacey you were not in that vicinity very frequently, were you, except just passing through?

A. No, sir.

Q. Do you remember the first time? I think you said you were up in Rail cañon once in 1885. You were never there before that time, were you?

A. I was in Rail cañon, but not in Dawson's ranch.

Q. What part of Rail cañon were you in?

A. Up at the head of the cañons.

Q. What were you doing there?

A. Looking for some animals.

Q. Whose animals were you looking for at that time?

A. Juan de la Cruz Lobato's, and also those of Neverto Barros, my father-in-law.

Q. You were over there just that one time, were you?

A. I think I was there twice or three times.
Q. During the same year?
A. No, sir.
Q. You were never there but once in any one year?
360 A. About once a year, or once every two years. Sometimes I would not go there for two or three years.
Q. How far is it from the head of Rail cañon to the springs in that cañon?
A. I could not tell you.
Q. You don't know where the springs are in that cañon, do you?
A. No, sir, I don't.
Q. When was the first time you were in Coal cañon?
A. I don't remember when it was, but I was there once during the time I worked for Lacey.
Q. You were not there at any other time?
A. Yes, I was there again during the time I worked for Pat. Lyons.
Q. When did you work for Pat. Lyons?
A. I think it was in the year 1882.
Q. What were you doing for him?
A. Working about the house.
Q. How far is it from the head of Coal cañon down to the springs?
A. I don't know where the springs are in these cañons.
Q. You were not over in Saltpeter cañon until you went to build that fence, were you?
A. I never built any fence in that cañon.
Q. Until you went to cut the posts?
A. I was there once before.
Q. In what part of Saltpeter cañon were you cutting these posts?
A. A little ways up the cañon, about three miles from the place where it joins the river, more or less.
Q. Was it up as far as where the cañon comes in close together, with bluffs on each side?
A. Yes, sir.
Q. How far up above where these bluffs are was it that you were cutting posts?
361 A. There are several places in the cañon that are very narrow.
Q. Isn't there a place up there where the bluff runs up pretty high, and where they come in pretty close together?
A. Yes, sir.
Q. Well, now, how far above that place was it?
A. A little ways from that place, further up on the sides of the cañon, and in the branches of the cañon.
Q. How did you get those posts out of there?
A. In wagons.
Q. Did you make a road through that narrow place in the cañon?
A. We did make a road there.
Q. What year was it you were cutting those posts there?
A. It has been two or three years ago. I could not just tell the year.
Q. What is Dawson's horse brand?

A. The ones I saw on the horses about the house was "S." I recognized that as the one he used for his horses.

Q. Did you see any of them up in Rail cañon?

A. Yes, sir.

Mr. CATRON, to witness: See any horses of any other brand, up Rail cañon?

A. Yes, sir.

Mr. JONES: What was the brand on the other horses you saw?

A. I saw one horse branded with Lacey's brand.

Q. How many horses did Lacey have?

A. I don't know. He had quite a number, that I saw.

Q. What year was it you saw that horse of Lacey's, up Rail cañon?

A. During all the times I went into that cañon, I saw horses with that brand on them.

362 Q. What year was it you saw the horses in there with that brand on them?

A. It was in the same year I told you I went into the cañon.

Q. Do you remember, now, what year that was?

A. Yes, sir.

Q. What year was it?

A. It was either 1884 or 1885; and, before that time and after that time, I was also there.

Testimony of William Brackett.

WILLIAM BRACKETT sworn.

Direct examination by Mr. CATRON:

Q. What is your name?

A. Will. Brackett.

Q. Where do you reside now?

A. At the Maxwell farm.

Q. Do you know John B. Dawson?

A. Yes, sir.

Q. Know his ranch?

A. Yes, sir.

Q. How long have you known that ranch?

A. I don't know how long. I think, ten years.

Q. What has been your occupation for the last seven or eight years?

A. I rode after cattle some, and I cooked most of the time for three years; and for the last year and four months I have been on the ranch of the Maxwell Company.

Q. What years did you ride after cattle?

A. The first summer I made a full hand was the summer of 1886.

Q. Did you ride after cattle anywhere in the vicinity of Dawson's place?

A. Yes, sir.

Q. With the round-ups, or how?

363 A. Yes, sir.

Q. Were you well acquainted with the country through there where Dawson lives, on both sides of the river?

A. Yes, sir.

Q. Now, what part of the country did you go through there on the round-up, in 1886?

A. I think we went all over the range, up in the mountains there.

Q. Do you know a cañon there called Rail cañon?

A. Yes, sir.

Q. Know one called Coal cañon—Saltpeter, and Lacey cañon?

A. Yes, sir.

Q. Know one between Lacey and Saltpeter cañons called Spring cañon?

A. Yes, sir.

Q. State whether or not you were in all of these cañons on that round-up.

A. Yes, sir.

Q. State whether there was anybody in that round-up representing Dawson.

A. Yes, sir.

Q. Who was it?

A. Part of the time one of his boys was there; and I think he had Mr. Zenus Curtis hired at that time to look after his cattle.

Q. In Saltpeter cañon, did you find any cattle on that round-up?

A. Yes, sir.

Q. Do you know John B. Dawson's brand?

A. Yes, sir.

Q. Find any of his cattle there?

A. Yes, sir.

Q. How was it in Spring cañon?

A. I don't know for certain whether we found any of his in Spring cañon or not.

364 Q. Find any of anybody else's in Spring cañon?

A. Yes, sir.

Q. In Rail cañon, did you find any of his cattle?

A. Yes, sir.

Q. Find any of anybody else's there?

A. Yes, sir.

Q. How were these cattle, when you found them there—were they loose, or under herders, or scattered, or gathered together?

A. They were loose.

Q. Were they loose, or were they together?

A. They were together.

Q. How close together?

A. Oh, I don't know whether you would call it together, or not; they were just scattered along through the cañon.

Q. What part of Rail cañon did you find them?

A. All the way up and down the cañon.

Q. What part of Saltpeter cañon did you find them?

A. All the way along the cañon; that is, above the Horseshoe fence.

Q. Did you find any cattle in Coal cañon?
A. Yes, sir.
Q. Find any of Dawson's cattle there?
A. I don't know that we did, above his fence.
Q. How far is his fence up?
A. I don't know.
Q. You know there is a fence there?
A. Yes, sir.
Q. Did you find any below the fence?
A. No, sir; I did not.
Q. Did you find any cattle of any one there?
A. Yes, sir.
Q. Did you go into Lacey cañon?
A. No, sir.
365 Q. How long were you riding the range, that year?
A. About five months, I think.
Q. Over what ranges did you ride, if you can remember?
A. Rode the river, Ojo Caliente, and cañons, on the west side of the Vermejo, El Ponil and Van Bremmer.
Q. And this range of Dawson's, too?
A. Yes, sir.
Q. How did the number of cattle on that range, which did not belong to Dawson, compare with the number of cattle on other ranges that did not belong to the men whose ranges you found them on?
A. I suppose, with the exception of Saltpeter, they were about the same.
Q. How was it in Saltpeter?
A. There were more cattle.
Q. More cattle that didn't belong to Dawson?
A. Yes, sir.
Q. There was a larger proportion of outside cattle in there than any other place?
A. Yes, sir.
Q. Now, did you see any one in those cañons, outside of those who were with the round-up, looking after or taking care of those cattle?
A. Yes, sir.
Q. Who did you find there? I mean, outside of those who were with the round-ups.
A. I saw Dawson's boys.
Q. Now, if those cattle had been constantly turned out of there, as they came in on that range, that did not belong to Dawson, could there have been that many in there when you made that round-up, of outside cattle?

Objected to by defendant's counsel.
Objection sustained.

Q. I will ask you if, on any other range than Dawson's range, you found any of his cattle.
366 A. Yes, we found his cattle on other ranges.

Q. In what quantities?
A. I could not say.
Q. Where did you find the largest quantity of them?
A. I could not tell that, either.
Q. The cattle of his that you found on other ranges, was there anybody looking after them, outside of the people that were in the round-up?
A. His boys were riding over the country frequently during the summer months.
Q. Outside of the round-ups?
A. Yes, sir.
Q. Did you see them frequently?
A. Yes, sir.
Q. What were they doing?
A. Simply riding over the range.
Q. Is that all you saw them doing?
A. Of course, if they saw anything that needed attention, they helped it.
Q. You mean cattle that had mired?
A. Yes, sir.
Q. Did you see them move any cattle?
A. No, sir, I did not.
Q. Did you see them in any of these other ranges, where, you say, you found some of Dawson's cattle, outside of those who went with the round-up?
A. I think not.
Q. Now, how did you do, with reference to the cattle, when you reached a man's range? How did you do, with reference to the cattle that didn't belong on that range, on the round-ups?
A. It was owing to the distance they were off of their own range. If they were some distance off, they were put into a day herd and taken back to their range.

No cross-examination.

367 *Testimony of June A. Hunt.*

JUNE A. HUNT sworn.

Direct examination by FRANK SPRINGER:

Q. Where do you reside?
A. Raton, Colfax county, New Mexico.
Q. How long have you lived in the county of Colfax?
A. About eighteen years.
Q. In what year did you settle in that county?
A. In 1874.
Q. In what part of the county did you make your first settlement?
A. It was in the head of what was known as Red river, at the Ojos Calientes.
Q. What part of the county is that in?
A. That is in the northwestern part of the county.

Q. Is that on the plains or in the mountain and valley region?

A. It is in the mountains.

Q. In what business did you engage when you first come to the country?

A. I was in the cow business.

Q. Where did you have your cattle?

A. We first turned our cattle loose on Red river, near the head of the Ojos Calientas.

Q. What was the nature of your cattle business? Were the cattle turned loose, or were they kept under herd?

A. The first year we were there we turned them loose, but sort of drove them back on Red river when they would stray off.

Q. How long from that year forward did you continue in the cattle business in Colfax county?

A. For twelve years.

Q. That would bring it down to 1886?

A. Yes, sir.

368 Q. In what part of the country did your cattle range after 1874, from one year to another?

A. In 1876 they got to running down on the Caliente, so we made that our permanent ranch. We moved there in 1876, and they ranged in that and adjacent cañons, and on the Vermejo, from that time on.

Q. Are you acquainted with John B. Dawson, the defendant in this case?

A. Yes, sir.

Q. How long have you known him?

A. I suppose sixteen or seventeen years.

Q. Do you know the place where he has been living during that time?

A. Yes, very well.

Q. Have you ever been at his residence?

A. A great many times.

Q. Where is his residence?

A. Well, it is located in what we call the Vermejo cañon, at the mouth of the cañon, where it enters the plains.

Q. How far is Dawson's residence from the place where you had your cattle headquarters on the Caliente?

A. It is about twelve or fourteen miles. Twelve miles, I would think.

Q. During the time that you were running your cattle from your Caliente ranch, state whether or not you were frequently back and forth between your place and Dawson's.

A. Yes, sir.

Q. Do you know the cañon in that vicinity called Rail cañon?

A. Yes, very well.

Q. Have you ever been in that cañon?

A. A great many times.

Q. How frequently have you been in that cañon during the time you were in the cattle business on the Caliente?

369 A. I could not say how many times, but I have been there quite frequently after cattle and horses.

Q. Do you know a cañon in that neighborhood called Saltpeter cañon?

A. Very well.

Q. Have you ever been in that cañon?

A. A great many times.

Q. Do you know any cañon in that neighborhood called Lacey cañon, and also one called Coal cañon?

A. Yes, sir.

Q. Have you ever been in those cañons?

A. A number of times.

Q. How much of these cañons have you been over at different times?

A. Oh, I have been all through the cañons. Take Saltpeter and Rail cañons, I have been over them, I suppose, four or five times to where I have been over the others once, or maybe a dozen times. I have been over them different seasons; following the cow round-ups.

Q. What I want to know is, whether you have been in different parts of those cañons; whether your visits were confined to one spot?

A. Yes, I have been in the side cañons, and all through the cañons, hunting cattle in the piñons.

Q. Have you been in and about the heads of these cañons?

A. Yes, sir.

Q. Did you ever see any cattle in any of these cañons, or in the country round about the heads of these cañons?

A. Yes, sir, a great many times.

Q. Were you acquainted with the different brands of cattle, located in that locality?

A. I was well acquainted with them.

Q. Whose cattle have you seen at different times in those cañons, during the time from 1876 on?

370 A. I have seen various brands; in fact, I suppose nearly everybody's cattle were represented—in fact, the plains cattle drifted in there a good deal, in the fall of the year; and our neighborhood cattle would get in there—the L. C. brand, the Lacey & Coleman brand, the Dawson brand, and the Hunt brand.

Q. Were you accustomed to see cattle of John B. Dawson in these cañons?

A. Yes, sir.

Q. Did you see cattle belonging to other parties besides Dawson there?

A. Yes, sir.

Q. About what proportion did the cattle of Dawson bear to the cattle of other parties running in these cañons, at that time?

A. During these years, from 1876 on, all through, of course Dawson's cattle were in the minority, because there was a great many men represented.

Q. Which do you understand were the most, during that time, Dawson's cattle, or the cattle belonging to outside parties?

A. The cattle of others.

Q. Were the cattle that were running in and about those cañons under herd, or were they running loose?

A. They were running loose.

Q. You say your cattle were accustomed to range in and about these cañons?

A. Yes, sir; after the year 1876 our cattle drifted across that way, and mixed in with the cattle of other owners.

Q. Into what cañons did they drift?

A. They drifted into Saltpeter and Rail cañons, and other tributaries of the Vermejo, there.

Q. What did you do with them when they got over there?

371 A. Along in 1875, when they drifted over there, we took them back, and herded them towards Red river—we were not used to the range conditions—but soon after we let our cattle drift together, and all the cowboys worked together.

Q. From 1876 on?

A. From 1876 on they all drifted together; and after that time we cut out our own cows and branded our own calves for a year or two; and then after that we all went together and worked together.

Q. From 1876 on, state whether or not you were accustomed to gather your cattle off from the range, about these cañons, and drift them back to your Caliente place?

Objected to as leading and suggestive.

Objection overruled.

Exception reserved.

A. I would say, from 1877 on, that we didn't turn our cattle back out of these cañons—Saltpeter and Rail, and those countries—because we had got used to the range conditions.

Q. In 1876 if you turned any of your cattle back what cattle was it, and what did you turn them back for?

A. I hardly think we did turn them back in 1876. I know we did in 1875, because we hadn't got used to the condition of things, but in 1876 our cattle mixed up with all the other cattle there, and if we turned any of them back it was from the edge of the plains, to keep them from drifting on the plains.

Q. You spoke of sometimes taking cows back to your place on the Caliente for the purpose of branding the calves. Where did you have your branding pens or corrals?

A. We had them at what we call Cottonwood cañon, the mouth of the cañon, and we branded them there and turned them loose again, and let them go where they wanted to, at will.

372 Q. From 1876 on for eight or ten years, state about what quantity of cattle you observed habitually ranging in the cañons I have mentioned and their immediate vicinity?

A. I suppose the best way of stating that is to simply state it was well stocked. Everybody's cattle was in there. They wanted them to have good piñon shelter.

Q. Was there other cattle ranges in that part of the country, adjacent to this one?

A. Yes, sir.

Q. Through that foot-hill and mountain country?

A. Yes, sir.

Q. Well, now, what, if any, difference was there in the way cattle were managed by the people residing in that neighborhood, in the cañons I have mentioned, and in the other surrounding parts of the range, such as on the Caliente or Van Bremmer?

A. I don't know of any difference at all.

Q. Were you acquainted with the cattlemen having cattle upon this range and other surrounding ranges?

A. Yes, sir.

Q. Did you have occasion to meet and converse with them frequently?

A. Yes, sir.

Q. State to what, if any extent, you associated with other cattlemen in handling and managing your cattle.

A. In the Caliente, among our neighbors, there and around these places, you are speaking of? The Curtis boys, our neighbors, that lived in the Caliente and Vermejo, co-operated together, I would think, after 1878 on.

Q. During those years, from 1876 to 1886, did you have occasion to meet and converse with John B. Dawson?

A. Yes, sir.

373 Q. Ever talk with him about the cattle business, during those times?

A. Yes, sir.

Q. State whether or not Dawson ever objected to your ranging your cattle in Rail and Saltpeter and the other cañons we have mentioned, in the neighborhood of his residence.

A. He never did.

Q. Did you ever hear of his objecting to any of the other cattlemen ranging their cattle there?

A. No, sir.

Q. State whether or not you ever asked Mr. Dawson's permission to allow your cattle to run there.

A. No, sir.

Q. I will ask you whether or not, during those times, you ever heard of any claim being made, or set up, by Dawson, to the exclusive ownership or right of range in Rail cañon, Saltpeter and the adjacent cañons, and the country thereabouts?

A. I never heard it discussed. I heard, along years earlier, Taylor Maulding say, in Cimarron, that they had a deed calling for the drainage of that country. The word "drainage" was so vague it never was discussed, or taken up, in that country.

Q. My question was, whether, during those times, you heard of any claim set up by Dawson to an exclusive right of range in that neighborhood, outside of his cultivated land?

A. No, sir.

Q. Do you know where the dam, at the upper end of Dawson's farm, is?

A. Yes, sir.

Q. Do you know where a rock fence, at the lower end of Dawson's farm, is?

A. Yes, sir.

Q. Now, I will ask you if you know the location of a tract of land described like this:

374 "Commencing at the dam on the Vermejo river, to the upper end of John B. Dawson's farm, thence running to a high point of rocks on the north side of Vermejo cañon; thence following along the top of the divide, west of Rail cañon, to the head of Saltpeter cañon; thence down along the top of the divide, east of Saltpeter cañon, to a point on a line with said John B. Dawson's rock fence; thence following the line of said rock fence, across the Vermejo, to the top of the divide between the Vermejo and Van Bremmer cañons; thence following the top of said divide to the head of Coal cañon, and thence along the top of the divide east of Coal cañon to a point on said divide nearest the place of beginning; thence to the place of beginning." I will ask you if you know the location of a tract of land described like that?

A. Yes, sir; I know it.

Q. I will ask you whether or not, during the time you have testified about, you ever heard of any claim being set up by Dawson to the ownership, or exclusive right of range, of that tract of land, outside of his cultivated lands?

A. No, sir; not during that time.

Q. That is from 1876 to 1886?

A. Yes, sir.

Q. I will ask you whether or not during that time your cattle ranged upon this tract they were ever interfered with or prohibited from doing so by Dawson?

A. We were not prohibited, and we did range there.

Q. Did you know a man named James Coleman?

A. Yes, sir.

Q. Do you know anything about Coleman's having a herd of cattle upon that tract of land at any time?

A. It was in the year 1879, I think, he located in the Saltpeter with a bunch of cattle and occupied a ranch there.

375 Q. What part of the Saltpeter cañon did he locate in?

A. About the center of the range of the cañon, I think.

Q. In what part of the cañon did his cattle range?

A. I believe they occupied the cañon at will. They were loose.

Q. Tell us what you know or recollect about it?

A. His cattle occupied that cañon. That didn't exclude anybody else, but he held them right by his ranch in the cañon and around the head of the cañon.

Q. Did he have a camp or a house there?

A. Yes, sir.

Q. What part of the cañon was that in?

A. It was in the middle of the cañon, at a big spring there was

there. It is inside of this land mentioned by these lines that you spoke of.

Q. State whether or not you ever saw the cattle of Coleman's range about the head of Saltpeter cañon?

A. Yes, sir.

Q. Do you know anything about a man named Bohanan having cattle upon any part of that tract of land?

A. In 1876, I think it was, I went through there and he was building his ranch right where this ranch of Coleman's was afterwards, and he established a ranch there and had some cattle loose there.

Q. Where were those cattle ranging?

A. In the Saltpeter cañon, at the head of the cañon.

Q. I wish you — give, Mr. Hunt, in your own way, an account of the manner in which the cattle business was managed in the portion of the country where you were familiar with it, from 1876 to 1886, with regard to the respective ranges of the cattle and the manner of handling and disposing of them?

376 Objected to on the ground that the witness has testified as to that whole matter and it is mere repetition.

Objection overruled.

Exception reserved.

A. J. B. Dawson's boys, and the Curtis boys, and our outfits would go over in these cañons, Saltpeter, Stout and Rail cañons, and we would round-up our cattle, and drive them to the pen, and brand the calves, and we would turn them loose and they would go back again. Of later years, from 1880, on we would round them up and brand them in the head of Saltpeter. We worked the country in a sort of company outfit. We all worked together and divided our expenses.

Q. Well, how was the cattle range all through that mountain country regarded by the men who had cattle in there?

Objected to on the ground that witness had already answered the question.

Question withdrawn.

Q. How was it treated as to being a common range or exclusive range by anybody?

Objected to as suggestive.

Objection overruled.

Exception reserved by defendant's counsel.

A. It was treated as a free, open range.

Q. State whether or not during that time you heard of this tract of land which I read you a description of being recognized by the people in that neighborhood as the exclusive range of Dawson's?

Objected to as immaterial by defendant's counsel.

Objection overruled by the court.

Exception reserved.

A. No, sir.

Cross-examination by A. A. JONES:

Q. I believe you stated you first settled on Red river, in Colfax county, in 1874?

377 A. Yes, sir.

Q. How far was that first settlement from Dawson's place?

A. About twenty-three miles.

Q. How many cattle did you have when you first settled there?

A. We turned loose in the year 1874, counting calves, 200 head.

Q. How many of them were calves?

A. Somewhere from 70 to 90, I think.

Q. You had in 1874 about 100 to 130 grown animals?

A. About 130 or 140.

Q. And they were kept up on Red river for the first year or two, I believe?

A. Yes, sir.

Q. You kept your ranch on Red river until in 1876, didn't you?

A. Yes, sir; I moved into the Caliente in 1876; built a cabin there in 1876.

Q. After you built that cabin on the Caliente, how long was it before you lived there permanently?

A. Some of us boys "batched" there all the time. My father and mother didn't move there for some years. We used it as a "batching" ranch from the time I built it in 1876.

Q. But your home was with your father and mother, on Red river?

A. Yes, or in the Vermejo park, where they lived part of the time.

Q. Well, during the year 1876, how much of the time were you "batching" on the Caliente?

A. My recollection is we built the cabin there in the fall of 1876, and I was there all the time, as far as a man could be at home. Sometimes I might be away a few days, visiting up home, or something like that.

Q. The cabin was built there in the fall of 1876, and you were "batching" there right along, were you?

378 A. I think so, yes; because I had nothing to do but look after the cattle then, and I think I staid there.

Q. You were "batching" there; staying there at night, and during the day you would ride out and look after the cattle?

A. Yes, sir; part of the time.

Q. Well, in the spring of 1877, didn't you drive your cattle back up on the Red river?

A. No, sir.

Q. Didn't you go back on Red river yourself?

A. No, sir.

Q. Didn't your cattle go back on Red river in the spring of 1877?

A. More or less they drifted back. The bunch grass gets better as you go back to Red river, and they drifted back.

Q. Didn't the greater portion of them go back?

A. One-half of them might have gone back. Cattle drift more or less out of these hills; out after bunch grass, towards Red river.

Q. That was the case on up until 1880, was it not?

A. No, sir, I think not.

Q. Didn't the cattle of the other people drift back in there on the Red river up until 1880?

A. Only those that were located in the cañons that ranged down off the Red River divide, that was there dividing the Saltpeter and Rail range.

Q. Up until 1880, the cattle in your vicinity did drift back over into Red river, didn't they, in the spring?

A. They did in the spring, but when the gramma grass started, later in the season, they came back again

Q. What was your business, Mr. Hunt, in 1877, 1878, 1879 and 1880?

379 A. Well, my business, outside of a few months in the summer, during the years 1877, 1878 and 1879, I was up at Elizabethtown in the butcher business, but I would go down in the Caliente several times during the summer and gather beef steers there.

Q. Do you remember exactly what years you were at Elizabethtown?

A. I think it was 1878 and 1879; two years. Two, three, or four months during the summer time I was up at Elizabethtown. The rest of the time I was back on the range.

Q. When you would come down from Elizabethtown for beef steers, would you go around on the range and round them up yourself?

A. I would buy of the parties that had some to sell. I bought some of Curtis, and probably bought some of old man Dawson. I would go out to the place where they had them.

Q. Did you go up on the Caliente?

A. Yes, sir; on the Caliente, and any place over the range they went to hunt the cattle. May have been in Saltpeter, or Rail, or anywhere around there—wherever they gather steers.

Q. During the summers of 1878 and 1879, who were the parties that you hunted steers with, for your Elizabethtown market?

A. I hunted steers with Frank Curtis, a nephew of Dawson.

Q. Who went with you to hunt those cattle?

A. Two or three of us would go out and hunt the steers, drive them in, cut them out, and put them in the corral, and go out and hunt some more.

Q. There was not any round-up system at that time, was there?

A. I think there was, in 1879.

Q. Do you remember who went with you to hunt those steers?

380 A. I know Frank Curtis went, for one. It may be the round-ups were out on some other parts of the range. I don't remember who was there. It is fourteen years ago.

Q. Do you remember that Frank Curtis went with you?

A. Yes, sir.

Q. What year was it that Frank Curtis went with you.

A. It was either the first or second year—I can't say which. I

know I bought some of old man Dawson's cattle, and some of his own, and drove up some of our steers.

Q. How many times did you buy from Mr. Frank Curtis, at that time?

A. I could not say how many; perhaps a half a dozen.

Q. Do you know how many you got from old man Dawson?

A. No, sir.

Q. You got about a half dozen, altogether?

A. Yes, sir, of theirs; I took some of our own.

Q. You stated they had no round-up system there until 1879.

A. No, sir.

Q. Did they have a round-up system before 1880?

A. I think we had, in 1879.

Q. You are not certain about it.

A. I am pretty sure of it, because that is my recollection of the year Jim Coleman came over to camp and frosted his cheek, one morning, where we were rounding beef steers.

Q. Where were your beef steers at that particular time?

A. They were running in all these cañons—on the general range I spoke of—Saltpeter, Caliente and Rail cañons. Jim Coleman was living in Saltpeter, with his cattle there, and he came to
381 where our steers were rounded up. It was a very cold morning. I frosted my feet and he froze one cheek.

Q. Where did you have the steers when he came over there?

A. They were about a mile above Frank Curtis' house.

Q. How far is that from Dawson's house?

A. About twelve miles.

Q. Didn't Coleman live on the Vermejo, at the old Stout place?

A. He did, at one time; at that time he had his camp under a rock, right there, at that Saltpeter water-hole, in a cave there was under there.

Q. That was his ranching place, was it—just a cave?

A. That was his ranching place, but he fixed up the cabin afterwards.

Q. Do you know how many cattle Coleman had in Saltpeter cañon?

A. I don't know exactly. I think, from one hundred to one hundred and seventy-five head.

Q. Was it nearer one hundred, or one-seventy-five?

A. I can't say. Probably between those numbers.

Q. On an average, you would judge, about one hundred and thirty or one hundred and forty?

A. Yes, sir.

Q. Do you know what he did with these cattle?

A. I think he sold them to Frank Curtis and John Dawson.

Q. How was the range up in that country, as to its being good or bad?

A. It was a very good range.

Q. All the time?

A. It was, up to 1880.

Q. In most of those cañons, could you not cut hay up until 1880?

382 A. Yes, I think, up to the fall of 1879, that you could cut hay in a great many of the heads of those cañons. In Saltpeter cañon you could not cut hay. It was in the cañons adjacent—in Five Dollar cañon and Dead Horse cañon.

Q. Could you do it in Rail cañon?

A. No, sir.

Q. And Spring cañon?

A. I don't know about Spring cañon. Never noticed that in the fall of the year.

Q. Could you do it in Coal cañon?

A. No, I don't think there was any hay in Coal cañon.

Q. Could you cut hay in Lacey cañon?

A. Well, I think in the lower part of Lacey cañon where the Cimarron road crosses, there was patches of hay. No large amount, but patches.

Q. But in Coal cañon, Rail cañon, Saltpeter cañon, you could not cut any hay there?

A. I don't believe you could.

Q. In all the other cañons around in that country you could cut hay?

A. In the head of Five Dollar you could cut hay.

Q. How far is the head of Five Dollar cañon from the drainage into Saltpeter cañon?

A. They head right together.

Q. Take the year 1877, where were you that year?

A. It was either 1877 or 1879, in the summer time, I was in Elizabethtown, as I told you.

Q. You don't know whether it was in the summer of 1877, 1878 or 1879, you were at Elizabethtown?

A. It was two summers within those three years.

Q. Can you fix it in your mind by the time you built your cabin in the Caliente; was it before or after that?

A. It was after that.

383 Q. When did you build that cabin?

A. In the fall of 1876.

Q. What were you doing in the winter of 1876–'7?

A. I was pursuing the common customs of ranchmen and cattlemen; riding after cattle some, and doing some hunting probably, and branding a few yearlings.

Q. And during the summer of 1877, you think, probably, you were in Elizabethtown?

A. I think I was.

Q. In the winter of 1877–1878 what were you doing?

A. I was in the same business, I suppose, around on the range there.

Q. In the summer of 1878, your recollection is, you were at Elizabethtown?

A. In 1878 I recollect I was in Elizabethtown during the summer.

Q. What were you doing during the winter of 1878 and 1879?

A. I was on the ranch or range. We did not do much in those days rode around looking after our cattle, and hunted deer around over the mountains on our range there.

Q. What were you hunting cattle for?

A. Sometimes we would strike a yearling and want to put muzzle on them to keep them from sucking the cow; maybe looking after some horses, looking after something that hadn't been branded.

Q. Take the winter of 1876 and 1877, did you stay every night at your cabin up there on the Caliente, I mean with the exception of the time when you were up at your home on Red river?

A. That was my place of residence and business.

Q. And that was true of the winter of 1877 and 1878, was it?

A. Yes, sometimes I stopped up at a farming ranch we had up at the head of the Vermejo.

384 Q. How far was that from your ranch on the Caliente?

A. I think it was eighteen or twenty miles.

Q. How many of your cattle got into the Saltpeter cañon up — the year 1879?

A. I have no idea. Of course there was a number of them, but I could not say what per cent.

Q. Did you find fewer of your cattle in these years in Saltpeter cañon than you did on any other part of that range up there?

A. Yes, I believe that is true.

Q. As a matter of fact up until 1880 the cattle didn't drift very much, did they?

A. Our cattle were mixed with those cattle from the fall of 1876 on, more or less, but of course, the larger part of our cattle at that time lay towards Red river, that is up to 1877, and even in 1878; but that was used as a common range, we never drove them back from there from 1876 on. We did not drive them back from Saltpeter and Rail and those cañons, because we considered it part of our range.

Q. Who did you work with in managing cattle up to 1879?

A. We didn't do much co-operative work up to that time. We worked by ourselves up to the fall of 1877. After that there was Jim Beardsley, and the Curtis boys, and the Dawson boys, we all worked together. Even before we organized any round-up with a wagon we would go out together and round-up on horseback.

Q. Well, now, in the round-up season there, how many of your cattle did you brand over in Saltpeter cañon prior to 1879?

A. I could not say how many.

Q. Up to 1879, you always drove your cattle home to brand them?

385 A. First we drove them to one of our pens, either the Curtis pen or our pen.

Q. These pens were all up on the Caliente, weren't they?

A. Yes, at the mouth of Dead Horse cañon.

Q. How far is that from Dawson's place?

A. About twelve miles. About five miles from Saltpeter, I guess.

Q. Now, I will ask you when was the first time that you were in Rail cañon?

A. I think, probably, the first year I was in there was in 1876. That was the first year I was in Saltpeter, too.

Q. In 1876 what were you doing there?

A. We were building our cabin there; my brother and I went down through Saltpeter cañon on horseback, and went down to the place where my father had moved to on the old stage crossing on the Vermejo.

Q. You were not in Rail cañon in 1876, that you remember of?

A. We went across the head of it.

Q. What was the first time you were in Coal cañon?

A. I don't remember the first year I was in Coal cañon. I passed the mouth of it and head of it several times. I guess it was probably two or three years later. Coal cañon is a deep, narrow cañon, and is not much of a cañon for stock.

Q. When was the first time you went through Lacey cañon?

A. I don't know. I have been along it a good many times, crossing and so on, going to Cimarron. We never cow-hunted in Lacey cañon, because that was close to the house, and in the summer time cattle didn't inhabit it much, except milk herds.

Q. Were you ever up to the head of Lacey cañon?

A. No, sir; not right to the head of it.

386 Q. Were you ever up above the forks in that cañon?

A. No, I don't believe I ever was up above the forks. It is not much of a cañon; take the cañons on the south side of the Vermejo, our cattle didn't drift across there so bad, they stayed on the north side, on their proper range in Saltpeter and Rail cañons.

Q. You never hunted cattle much in Lacey and Coal cañons?

A. No, sir.

Q. Do you remember the first time you ever hunted cattle in either of these cañons?

A. Yes, I should say I was through the head of it in 1882. It was rough, precipitous hills all on the north side, and cattle didn't seem to take to it much.

Q. Then you don't know much about Coal cañon, except subsequent to 1882?

A. I don't know much about Coal cañon at all.

Q. How many times have you hunted cattle in Coal cañon?

A. I don't know that I was ever in Coal cañon but once. Our cattle didn't drift in there on account of the rough hills along the south side of the Vermejo.

Q. Do you remember what year you were in there that first time?

A. I think it was 1882.

Q. And you were around the extreme head of the cañon then?

A. Yes, sir.

Q. And you haven't hunted any cattle in there since?

A. No, sir. I didn't see any cattle in there when I was there.

Q. So, as a matter of fact, then, you have never seen any cattle at all in Coal cañon?

A. No, sir; except at the mouth of it.

Q. And these were cattle belonging to Dawson?

387 A. Yes, sir.

Q. Now coming to Rail cañon, when was the first time you were in Rail cañon, except the time when you rode across the head of it and went over into Saltpeter?

A. In those days I can say we hunted in that cañon the same *the same* as the rest of our range.

Q. How far was your ranch on the Caliente from the head of Rail cañon?

A. On a direct line, I suppose about four or five miles.

Q. Well, didn't you have a range up there designated as your own, Mr. Hunt?

A. No, sir, we had a range north of us a little piece, that our cattle run in more than any one else's.

Q. Didn't each cattleman up in that section of the country have a particular section of the country that he called his range?

A. No, sir. Unless you might say Jime Wole; he had his cattle pretty close to him in the head of Caliente, and he located them considerably.

Q. Didn't you have any place up there that you called your range?

A. No, sir. We had a range, as I told you, where there was more of our brand of cattle than there was other people's cattle.

Q Didn't you call that your range?

A. I don't think so.

Q. Well, the people up in that country, none of them, except Wolf, never had any particular range for their cattle at all?

A. No, sir.

Q. Do you know how the Maxwell Company managed their cattle?

A. Yes, quite well.

Q. Up until the time you left there, always in the round-up, after they commenced having round-ups, did they take their cattle out and back onto the prairie?

388 A. I don't know about that; but most of the plainsmen did that.

Q. Don't you know that the managers of the long H brand did that, too?

A. Yes, I think they did.

Q. The long H brand was the Maxwell Company's brand, was it not?

A. Yes, sir. It first belonged to Lonny Horn, afterwards to the Maxwell Company. I think that in summer round-ups they took their cattle back to the prairie.

Q. When did they first commence their regular round-ups there in that country?

A. I don't think we took a wagon with us until the spring of 1880.

Q. In the spring of 1880, didn't you take a pack outfit up in the Red River country, instead of a wagon?

A. Yes, I think we took a pack outfit up to the head of Crow creek and up to the Red river; that was on account of the drouth that came that year, and the bunch grass was better around the head of the Crow creek, and we went over there to give our horses a rest.

Q. When was that "Croker Association" organized?

A. I could not say with any certainty. I suppose it was that spring.

Q. Was it not in 1882 or 1883?

A. Well, it may have been 1882 or 1883 that the organization was formally organized. We called ourselves the Croker outfit from the spring of 1880, the time the drouth was.

Q. From the time you called this the Croker outfit, was not that the first time there ever was any round-ups in that mountain country?

A. It was not the first time we done labor together. It may have been the first time we all got out in camp and camped at the heads of the cañons together.

389 Q. Prior to that time you would stay at home at night and ride around in the daytime?

A. Yes, sir, except on odd occasions, when we went out on trips below, and three or four of us would stay at night at somebody's ranch.

Q. Do you remember about the "Croker" outfit talking about building a beef pasture, in 1883, 1884 or 1885?

A. Yes, sir.

Q. Do you know where they wanted to build that pasture?

A. They talked of building a beef pasture in Saltpeter cañon.

Q. Do you remember of Mr. Dawson objecting to that?

A. No, sir; I don't remember it.

Q. Well, do you remember his saying anything about it?

A. No, sir. I remember this: The boys were talking about building it over there; they got to speaking about Dawson and Frank Curtis, that they had bought Jim Coleman's cattle, and the cattle were located pretty well around the water-hole—there was a cabin there—and Dawson and Curtis seemed to claim that as their ranch, you know, on account of having bought the cattle; but I don't remember ever speaking to them about it.

Q. Did you ever hear anybody say that Dawson claimed that as his ranch, because he had bought the Coleman cattle?

A. Yes, sir; that is, that he had a claim upon it; that he and Frank Curtis claimed it on that account. I heard Frank Curtis say so. We always recognized such claims. If any one bought a ranch and located a little bunch of cattle, we always recognized they had a better claim there than any one else; but our cattle were

390 never driven away from such place. They had free access to the water, grass, and everything of that sort.

Q. But, did you recognize that Dawson had a claim in that Saltpeter, there, some time in 1883 or 1884. Answer that question, yes or no.

A. Yes, sir, as I stated.

Q. State, if you know, when they bought those Coleman cattle.

A. I can't state accurately. To the best of my recollection, I would say, from 1883 to 1885.

Q. Then you people did have ranges up there that the people recognized to some extent?

A. Only in the matter of that fence, is all.

Q. Why is it, Mr. Hunt, that people would recognize that another man has a range, when you are going to fence it, and not recognize it when you are not going to fence it?

A. I suppose, if any one of our neighbors objected to fencing, they would have a perfect right to do so. We were all acting in common with an open range.

Q. Now, if it was in common, and an open range, why should they object to fencing one part any more than another?

A. There was good water and range there; we thought that it ought to belong to everybody in common.

Q. Was not this beef pasture to belong to that association?

A. Yes, sir.

Q. That was to be a common pasture?

A. Yes, sir.

Q. Why should they object to fencing one place, for that purpose, any more than another?

A. On account of men having range there and rounding up their cattle at that water-hole. This camp, there, was always recognized more as private property than an open range.

391 Q. Then, the people there did have places that the people recognized as private property?

A. Oh, yes; they did, right at their ranch; right at their house.

Q. Then, they sort of recognized that Dawson had some claim on the Saltpeter cañon, didn't they?

A. As I stated, yes.

Q. You stated that they thought they would ask Dawson's permission to put the fence there?

A. Yes, sir; just as if they wanted to fence my horse and ranch, they would ask me.

Q. If they had wanted to fence any part of your ranch, they would have asked your permission?

A. Yes, sir; around my house, certainly.

Q. Was there any house over there in Saltpeter cañon?

A. Yes, sir.

Q. How long was there a house there?

A. I don't know as I remember. I remember stopping there and eating dinner with Jim Coleman, one trip; but the cabin burned down afterwards.

Q. When was that?

A. I can't say what year it was.

Q. Do you have any recollection as to when it was?

A. I think it was between 1879 and 1883.

Q. Then, it was between 1879 and 1883 that Coleman first went there?

A. I think he went there in 1879.

Q. Don't you know that house didn't stand there more than a year?

A. No, sir, I don't know it. I know he had his cattle there two or three years.

Q. Don't you know the house was gone long before Mr. Dawson and Curtis bought these cattle?

392 A. I think it was gone when they bought the cattle. As to the length of time it had been gone, I can't say.

Q. Then what claim on the range did Coleman have?

A. He lived there.

Q. Lived there after the house was gone?

A. I don't know whether he lived there after the house was gone, but he had a sort of a corral there.

Q. He lived in the corral, did he?

A. No, sir; he lived under a rock, a good part of the time, in a cave, there.

Q. Didn't he live on the Vermejo, now?

A. He lived on the Vermejo part of the time, but I don't know what years he lived on the Vermejo.

Q. Wasn't he living on the Vermejo when they bought those cattle?

A. I could not say whether he was living on the Vermejo or not. A large part of his cattle were on the Saltpeter, and Jim Coleman was a man that traveled around a good deal, buying and selling steers. He was not much of a fellow to have any sort of a home.

Q. He didn't have much of a range, then, did he?

A. Well, the head of Saltpeter is a pretty good range.

Q. Don't you know that man Coleman was living on the Vermejo when he sold those cattle, at the old Stout place?

A. No, sir; I don't.

Q. You was not around over that country very much?

A. Yes, I was around over that country all the time, but, after a lapse of so many years, I can't tell where he was living. I know where his cattle were.

Q. Do you remember the time when Coleman killed a steer belonging to Mrs. Terhune?

A. I heard there was such a thing occurred.

Q. Where was he living at that time?

393 A. I don't know, sir.

Q. Didn't you hear about their going up to the Stout place to find how the steer had been killed?

A. Yes, I heard something of that kind.

Q. You don't know where Coleman was living at that time?

A. No, sir; not at the time he sold his cattle.

Q. At the time he killed that steer, do you know where he was living then?

A. I only recollect that I heard Mrs. Terhune went up there to see something about the hide. I don't know what year it was.

Q. You mean to say that after 1876, and up to 1886, the time these cattle were sold, all the range was treated just alike; that everything was in common and free for all?

A. Yes, sir; free for all.

Q. And nobody had any range of his own, or undertook in any way to keep his cattle on his range? Never tried to keep anybody else's off, that is what I mean.

A. Sometimes a man like Jim Wolf had a preference to keep his cattle near at home, but they never run anybody else's cattle off. It was a free, open range, anyway.

Q. How many times during the winter of 1877, and also the winter of 1876, were you in Rail cañon and Saltpeter cañon?

A. I can't say.

Q. Have you any judgment at all as to how many times you were in there?

A. No, sir; but I was back and forth a good many times, driving cattle back on the Vermejo. We didn't want the cattle to drift out on the plains. We were not used to the range conditions, and wanted to keep our cattle back in the mountains.

394 Q. Did you do the same thing all the next winter?

A. I pursued the avocations of the general ranchman; could not say what cañons I was in. It was a common range there for us, the same as for everybody else.

Q. Are you not pretty sure, now, that you didn't have any cattle in Saltpeter and Rail cañons in the winter of 1876 and 1887?

A. No, sir; I am not sure of it.

Q. Did you take any of them out of there in the winter of 1876 and 1877?

A. I don't think in those years we drove any out of there. We bought some cattle on the Cimarron—that was in later years—and we drove them back up on the Vermejo, and shoved them back up the cañons.

Q. When did you first buy any prairie cattle?

A. I don't remember. It may have been in 1879 we bought a bunch of 125 head of cattle, down about Cimarron.

Q. Until you commenced to buy these prairie cattle, you didn't find any of your cattle in those cañons, Rail and Saltpeter?

A. Oh, yes, we found some of our cattle in there before.

Q. How many of your cattle did you get out of either one of those cañons in the winter of 1877–'78?

A. I never drove cattle out of there in those winters, I don't think.

Q. How many of your cattle did you see over there in the winter of 1877–'78?

A. I could not say about that. There was a small per cent. They didn't drift as much in 1876; but in 1877 they scattered a good deal more, of course, and occupied a larger range. Part of our cattle were located up in the Caliente, but they drifted all the time,

395 and mixed with everybody else's herd afterwards; more all the time, every year.

Q. Do you remember exactly, as to the winter of 1877–'78, as to seeing any of your cattle in those cañons?

A. I don't say that I saw any of our cattle there, but it is my im-

pression our cattle were running there—a small proportion of them—during the winter of 1876 and 1877.

Q. Who else had cattle, during those years, between your ranch and Dawson's ranch?

A. Lou Coleman and Mr. Lacey had the L C brand; then there was the Curtis boys.

Q. I am speaking of the years from 1876 up to 1879 and 1880.

A. There was Jim Coleman, Jim Beardsley. I think Marion Littrell's cattle were turned in the mountains, and mixed with our cattle.

Q. Prior to 1879, who had cattle up there between you and Dawson?

A. I think there was a few plains cattle, of different brands, in there.

Q. Who were the people living there and having ranches there, and cattle upon them, between you and Dawson, up to 1879?

A. Jim Beardsley.

Q. Where was his ranch?

A. He boarded with Frank Curtis.

Q. How long did he board with Frank Curtis?

A. A good many months.

Q. How long did he have cattle there?

A. I don't remember. He had cattle there several years.

Q. Do you remember what year he had his cattle there?

A. I could not say exactly; I would say it was 1878 or
396 1879. Lou Coleman lived at the mouth of Stout cañon. I think his brand was D S. He had cattle that ranged in that vicinity.

Q. How many cattle did Beardsley have?

A. I think he gathered over 200 when he left; and he left a number of beef steers on the range for me to gather and sell for him—I think twenty or thirty head.

Q. He left in what year?

A. My recollection is, that he was there in 1878 or 1879, and was only there a year or so.

Q. He staid with Curtis during the time he was there, did he?

A. Yes, I think he made his home principally with the Curtis's; he was out on the plains, attending to his cattle, a great deal.

Q. Now, below the Curtis place were the Lacey cattle?

A. The L C cattle occupied all that mountain range; they were a large brand of cattle.

Q. Where was the home ranch of the Lacey cattle?

A. They had ranches all around.

Q. I mean in 1878 and 1879.

A. I think Clay Allison was running those cattle in those years, and that he had a camp down the Red river—down on the plains.

Q. Down on Red river, below where Maxwell city is now?

A. Yes, sir.

Q. How far is that from Dawson place?

A. About twenty miles.

Q. How long did they keep their ranch there?

A. They had a ranch there several years.

Q. Didn't they have a corral down there on Red river, where Coleman and Lacey divided their cattle, the same year that Beardsley went away?

A. I could not say it was the same year.

397 Q. Don't you know that Beardsley went with Coleman?

A. I believe he did.

Q. And that was where Coleman and Lacey divided their cattle—down on Red river?

A. Yes, sir.

Q. Now, Beardsley staid at Curtis' place—how far was Frank Curtis' place from Dawson's?

A. About ten or eleven miles.

Q. Now, the next place below that was the Coleman and Lacey place, you say?

A. Yes, sir.

Q. Now, up to 1879, did Coleman and Lacey keep their cattle at this place, at all?

A. They kept a good many of their American herd around there; and they had a number of range cattle in the mountains there, also.

Q. The only cattle they pretended to hold there, as a ranch, was a small herd of thoroughbreds, was it not?

A. Well, they had several hundred head of their fine cattle there, and, then, their beef steers. I went out and helped them gather beef steers—wild steers—on the plains.

Q. What year was that?

A. Some time between 1876 and 1879; I can't say.

Q. They gathered their beef steers in the winter time, did they?

A. Yes, sir.

Q. Where did you find beef steers at that time?

A. We found them around the head of Five Dollar and Dead Horse cañons, and Saltpeter cañon.

Q. Did you find them any other place on the Caliente range?

A. There were plenty of beef steers all through the Caliente range.

398 Q. How did the Lacey beef cattle happen to be up there?

A. I suppose they came there just like their other cattle—drifted in from the plains.

Q. You haven't any definite knowledge, of your own, as to how they got there?

A. No, sir.

Q. You didn't see how they got there?

A. Only from what I know of the habits of cattle.

Q. I am speaking of your own knowledge. Did you see them go there?

A. No, sir, I didn't.

Q. Don't you know that they were driven up there, to be held by them, so that they could sell them?

A. I don't know.

Q. Don't you know the regular range of their cattle was down on the prairie, twenty miles or more away?

A. That was the center of their range; yes, sir.

Q. Don't you know, as a matter of fact, that, until 1880, cattle in that country didn't drift much?

A. I don't know that as a fact.

Redirect examination by Mr. FRANK SPRINGER:

Q. You have stated, in answer to a question by Mr. Jones, that Lacey and Coleman occupied all that mountain range; that they had a herd of fine cattle and beef steers there. What part of the mountain range did these fine cattle and beef steers inhabit?

A. Well, sir, they were scattered over the range, there. There were one thousand head of calves turned loose, there, to wean, and other stock cattle.

Q. I will ask you, whether these cattle ranged, to any extent, in Rail and Saltpeter cañons.

399 A. Everybody's brands were mixed—as they happened to come. They would be thicker in some places than others.

Q. These Lacey and Coleman cattle, as a matter of fact, did they go into Rail and Saltpeter?

A. Yes, sir.

Q. Now, you stated, in answer to a question, that when a person had a bunch of cattle, in a particular place, if he had a ranch there for some time, that the cattlemen recognized a sort of claim that he had. Now, I will ask you, whether they recognized that as a claim of ownership of the land, or simply as a preference right to graze there for the time being?

A. They did not recognize their claim, only that they had more claim than anybody else—not as ownership of the land, but it was more a matter of courtesy than anything else.

Q. You spoke, also, of the people from the plains cutting out their cattle from the mountains, and taking them out on the plains again; was that from any particular range in the mountains, or from the mountain range, generally?

A. The mountain range, generally.

Q. You spoke, also, of driving your cattle home to the Caliente to brand them. How often, during the year, in those early years, were you in the habit of doing this?

A. Done it every few days, when we had occasion to do it.

Q. After they were branded, what did you do with them?

A. Turned them loose and let them go.

Q. During the two years you were at Elizabethtown, in the butcher business, how much of the time were you there?

A. I was there during the summer months.

400 Q. During the rest of the time, what were you doing?

A. Back on the range, looking after general stock interests.

Testimony of Marion Littrell.

MARION LITTRELL sworn.

Direct examination by FRANK SPRINGER, Esq.:

Q. Where do you reside?
A. Colfax county, New Mexico.
Q. How long have you lived in Colfax county?
A. Since 1873, I think.
Q. In what part of the county did you settle in 1873?
A. On the Vermejo, there, on the Maxwell grant.
Q. What is your business?
A. Stock business.
Q. In what business did you engage when you first came to Colfax county?
A. I worked at stock business ever since I have been in the country.
Q. Have you been in the business ever since?
A. Yes, sir.
Q. Have you been living in Colfax county ever since?
A. Yes, sir.
Q. Over what part of Colfax county, during that time, have you been engaged with cattle?
A. I have been on the Maxwell grant about all the time.
Q. Are you acquainted with the country in the mountain and valley region of the Maxwell grant?
A. Yes; most of it.
Q. Are you acquainted with the country along in the cañons and heads of cañons emptying into the Vermejo?
401 A. Yes, sir.
Q. Do you know a cañon called Rail cañon, emptying into the Vermejo near Dawson's place?
A. Yes, sir.
Q. Do you know where John B. Dawson lives?
A. Yes, sir.
Q. Has he lived at the same place ever since you came to the country?
A. Yes, sir.
Q. Are you acquainted with Dawson?
A. Yes, sir.
Q. How long have you known him?
A. Ever since I have been in the country.
Q. Do you know Lacey cañon, Saltpeter, and Coal cañons?
A. Yes, sir.
Q. Do you know Spring cañon?
A. Yes, sir.
Q. Are you acquainted with the country between these different cañons?
A. Yes, sir.

Q. To what extent—for what time—have you been over and through that country, in the drainage of these cañons?

A. Well, I have been over the country, more or less, ever since 1874 or 1875.

Q. You first became acquainted with that locality in 1874 and 1875?

A. Yes, sir.

Q. What did you do in there then? How did you come to be acquainted with that region?

A. On the round-ups.

Q. Were you running cattle in there at that time?

A. I had no cattle at that time.

Q. Were you running cattle for any one else?

A. Yes, sir.

Q. Who for?

402 A. A man named Cox.

Q. Where did Cox live?

A. On the Vermejo.

Q. Whereabouts, with regard to Dawson's place?

A. He lived some six or seven miles below.

Q. You were running cattle for him, at that time?

A. Yes, sir.

Q. Where did his cattle range?

A. Most of them on the prairie, over the Vermejo, Red river, and Crow Creek country.

Q. What was the occasion of your going on to this region of Rail and Saltpeter cañons for his cattle?

A. To look for those that might have scattered during the winter.

Q. Did you find any of them in there?

A. Yes, sir.

Q. Did you see any cattle in there?

A. Yes, sir.

Q. Were you acquainted with the different brands of cattle running in that country, from 1874 or 1875 on?

A. Most of them; yes, sir.

Q. Well, take it along from 1875 on—tell me what cattle you saw from time to time in Rail, Salpeter, Coal and Lacey cañons.

A. In Rail and Saltpeter, I saw some of most everybody's cattle—everybody's that was located around in that section of the country, close.

Q. Were there a good many different cattle-owners having cattle in that country?

A. Quite a number; yes, sir.

Q. About how many, as near as you can recollect? Name those you can remember now.

A. Lacey and Coleman, the Curtis boys, Allison, Cox, Morrison, O'Neil, I guess were the principal stockmen there.

Q. That was at the beginning, when you first went there?

403 A. Yes, sir.

Q. Did Dawson have cattle running in there?

A. Yes, sir.

Q. When you first began to go into that neighborhood, what proportion did you observe of other cattle to Dawson's cattle on that range?

A. It is very hard to remember. I would say something near the same as it was in the other cañons in the neighborhood.

Q. As I understand you, there were cattle of Dawson, and also cattle of other people ranging in there?

A. Yes, sir.

Q. According to your observation, as you can recollect, which were there the most of, Dawson's cattle, or cattle of the other people?

A. It is hard for me to remember; though, taking all the other different brands together, I suppose there would be more of them than of Dawson's. Of course I could not tell exactly. Dawson had quite a number in there, and there was quite a number of other people's cattle in there.

Q. Were any of those cattle, those first years you worked there, kept under herd?

A. Do you mean "close-herded"?

Q. Yes, sir.

A. No, sir; I think not. I don't remember.

Q. How did they run?

A. In those early days there, each man gathered his cattle in the summer time and spring; but in the winter time they didn't pay much attention to them.

Q. How did they run during the winter time?

A. Just mixed together—run wherever they chose to. Some men looked after their cattle closer than others, and kept them turned in on their ranges.

Q. When they were gathered in the summer, what did they do with them afterwards?

A. They took them home.

404 Q. What do you mean by taking them home—where did they take them to?

A. Took them to their ranges.

Q. For the purpose of branding, as I understand you?

A. Yes, sir.

Q. What was the necessity of taking them to their ranges to brand them?

A. For corrals, to keep the calves in.

Q. They took them to the branding corrals?

A. Yes, sir.

Q. After they were branded, what did they do with them?

A. Turned them out.

Q. Where would the cattle go then?

A. I don't know; they would generally go back where they were used to running.

Q. After they were turned out of their branding corrals, were they turned loose, or kept under herd, in any way?

A. They were turned loose.

Q. Well, now, along in the years following, from 1875 on, did other cattle come into that country, besides those of the owners you have mentioned?

A. I think so; yes.

Q. Name some of the other cattle you can recollect that came in there afterwards.

A. You mean, from 1875 up to what time?

Q. On along for ten years.

A. John Allison had a bunch in there. He was in on the Vermejo, there, and six or seven miles from Dawson's I guess; and his cattle ranged over the same range as the rest of the mountain cattle there; and, I think, Jim Coleman had a bunch in there.

Q. Where did Jim Coleman's cattle range?

405 A. Well, in that mountain country at the head of Saltpeter, Rail and Five Dollar cañons. All those cañons head in there together.

Q. Any other people that you think of, now?

A. I don't know as I can call any to mind, just now.

Q. Take all these cattle that you have mentioned, and I will ask you, in what manner they ranged through that country; as to whether each one had a special range for his own exclusive range, or whether they ranged over it as a general or common range.

A. Each one had a range that they claimed was their own. They had certain boundaries that they tried to keep their cattle inside of.

Q. Well, to what extent were they actually kept inside of those boundaries?

A. Well, for a few years, until along in 1880 or 1881, or 1882, probably, they were kept pretty well in. The grass was good, and they didn't have much trouble to keep them in.

Q. Now, did the people, in claiming or recognizing these ranges, claim or recognize them as ownership of the land, or simply as a preference right of range there?

A. Simply as a right of range, I guess.

Q. Did this claim, among the different cattle-owners, extend to a claim to the land for their cattle to run on?

A. Well, I don't think they pretended to claim the land the cattle ranged on. Lots of them claimed their ranches, where they had their headquarters.

Q. You mean the places where they had their houses and corrals?

A. Yes, sir; they thought that it was a public range.

Q. The range, itself, you say, was considered a public range?

A. Yes, sir.

406 Q. Were you acquainted, generally, with the men who ranged cattle in that mountain region?

A. Yes, sir.

Q. Did you ever have occasion to meet with them and converse with them, in regard to the cattle business?

A. Yes, sir.

Q. Was that frequent or seldom?

A. It was quite frequent.

Q. Did you ever have any conversation with Mr. Dawson in regard to the cattle business?

A. I don't know that I have. I don't remember.

Q. You have stated, I believe, that you are acquainted with Dawson?

A. Yes, sir.

Q. Have been at his house?

A. Yes, sir.

Q. Have you ever talked with him on any subject, generally?

A. Yes, sir.

Q. Have you met him and talked with him, frequently or seldom?

A. Frequently.

Q. Has that been the case ever since you began running cattle up in that country—with Dawson, I mean?

A. Yes, sir.

Q. Now, taking this tract of land in Rail cañon, Saltpeter cañon, Coal cañon and Lacey cañon, and the country which is drained by these cañons, I will ask you, whether, during the times you were running cattle in that neighborhood, the cattle you were in charge of were ever driven off of there by Dawson, outside of his cultivated land?

A. Not that I ever knew of.

Q. Was any objection ever made by Dawson to the cattle
407 in your charge running there?

A. No, sir; not that I heard of.

Q. Ever hear of any objection made by him to cattle of other people running there?

A. No, sir.

Q. Did you ever hear, during these times, of any claim by Dawson to the ownership of that range, outside of his cultivated land, say during the first ten years that you began to run cattle there?

A. Yes, I have heard that he did claim the land.

Q. Who did you hear that from?

A. I can't say who I heard it from. I heard it different times.

Q. I will ask you whether any claim by him to exclusive ownership of that range was recognized by the cattlemen generally?

A. Outside the enclosure it was just the same as other country around there.

Q. I am asking you, outside of his cultivated lands in the valley, whether he had any claim to exclusive use of that range, that was recognized by the other cattlemen?

A. No, sir; not that I ever heard of.

Q. How long did you run cattle for Mr. Cox?

A. I think, up to 1878 or 1879.

Q. What was the next cattle that you had charge of?

A. Why, I worked for Dr. South and Linhart.

Q. Did they have cattle running in that neighborhood?

A. Yes, sir.

Q. Did you ever find their cattle up on this Rail and Saltpeter range?

A. Yes, sir.

Q. Was there any objection made by anybody to their running there?

A. No, sir; not that I heard of.

408 Q. Were you ever requested by Dawson to take them off?

A. No, sir.

Q. Well, what cattle did you next have charge of?

A. After that I had a little bunch of cattle in the mountains of my own.

Q. Where did your cattle range?

A. They ranged in the Caliente, and the tributaries there that run into the Caliente.

Q. They ranged over on the Saltpeter?

A. Yes, Saltpeter and Rail.

Q. Anybody object to your running your cattle there?

A. No, sir.

Q. Did you ever ask permission of anybody to range them there?

A. No, sir.

Q. Well, that brings it up to about what time?

A. That brings it up to about 1879. I think, I moved my cattle in there in 1879.

Q. What cattle did you have in there after that? Did you have your own?

A. I think I took mine out in 1881.

Q. Whose cattle did you run after that?

A. I worked for the Vermejo Company in 1881. I was not working after my own cattle. I had another party looking after them in the summer of 1881.

Q. Where did the cattle of the Vermejo Company range?

A. They were in a pasture.

Q. What pasture was that?

A. It was known as the Horseshoe pasture, on the lower Vermejo, right at the foot-hills.

Q. Was that enclosed with a fence, all around?

A. Most all around. On the northwest there is a mountain, a natural fence.

409 Q. Is Saltpeter cañon in whole, or in part, in that pasture?

A. A portion of it is in that pasture.

Q. Was the balance of it fenced off in any manner from that pasture?

A. There is a fence across the cañon, to keep cattle from going up and down the cañon.

Q. You say there was a fence there?

A. The Horseshoe had a fence there.

Q. About where was that fence?

A. It crosses the cañon, I suppose, about five miles above the mouth; four or five miles—something like that.

Q. You began working for them about what year?

A. In 1881.

Q. How long did you continue working for them?

A. I think I quit working for them in November or December. I worked for them only that summer.

Q. What were the next cattle you had charge of, in that neighborhood?

A. I worked for the Red River Cattle Company, after that, probably four or five months—I don't remember; a short time, though—below Springer.

Q. I mean in this Vermejo country.

A. Then I took charge of the Maxwell Company's cattle.

Q. About when was that?

A. That was about, I think, 1883.

Q. Where did these cattle range?

A. Most of them on the prairie, Red river, and the Vermejo, and Crow creek.

Q. Now, during this time that you have been connected with the cattle business in that neighborhood, I will ask you whether there has ever been any opposition or objection raised by any one to the ranging of cattle upon Rail cañon and the upper end of Saltpeter cañon, or the drainage of those cañons, or in Coal or Lacey
410 cañons, outside of the cultivated lands and improvements; that is, of your own knowledge?

A. Not to my knowledge—outside of the enclosure of the Horseshoe pasture; they objected to cattle grazing in there.

Q. My question referred entirely to the lands above the Horseshoe pasture.

A. Not to my knowledge.

Cross-examination by A. A. JONES:

Q. You are in the cattle business now, are you not?

A. Yes, sir.

Q. For the Maxwell Company?

A. Yes, sir.

Q. You went on to Vermejo in 1873, I believe you stated.

A. I think, in 1874. We were there in 1873, but never located until the latter part of 1873, or 1874. We were on Red river in 1873; and, I think, the latter part of 1873, or in 1874, we went over on the Vermejo.

Q. Were you with Mr. Cox, at that time?

A. Yes, sir.

Q. Where did Cox have his cattle ranging?

A. Well, his cattle ranged on the prairie, Crow creek, and Red river.

Q. Well, I believe you stated, up until 1880 the grass was good, over there?

A. Yes, sir.

Q. And the cattle did not drift as much up to that time as they did afterwards?

A. No, sir.

Q. And up to about that time each of the cattlemen had a range of his own, that he tried to keep his cattle on?

A. Yes, sir.

411 Q. And there weren't many cattle that drifted off this range, up to 1880?

A. No, sir; not a great many.

Q. Up to that time the people would ride about, to some extent, to keep their cattle on their ranges, would they not?

A. Yes, a great deal more so than they did later on.

Q. And, during those years, this scope of country Mr. Springer called your attention to—that was spoken of as Dawson's range, was it not?

A. Yes, sir.

Q. It was generally understood in that community that Dawson and Curtis and Miller and Maulding had bought, some years before, a tract of land, from the dam down to the lower line of the O'Donnell farm, with the drainage, was it not?

Objected to.

Objection sustained.

Exception reserved by defendant's counsel.

Q. The other people, that you say had ranches around in that country, as a rule regarded that land as public land, didn't they?

A. Well, some claimed it was public land, while others claimed it was on the grant.

Q. Was not that the main reason why these people who had ranges simply claimed to own the land where their ranches were: I mean, the people outside of Dawson, and those who lived up in the Caliente country?

A. I don't know as I understand the question.

Q. From the fact that they supposed the land to be public land, that they could not take up more than one hundred and sixty acres, was not that the reason why they claimed to own the land around their houses, and not their ranges?

A. Yes, I think so; a great many of them.

Q. Was it not generally understood, around there, that Dawson claimed to own his lands?

412 A. Yes, sir.

Q. Up until 1888, when the Maxwell Company bought the cattle of nearly all these men, up there in that country, was it not customary for the Maxwell Company to drive their cattle out every year from the mountains down onto the prairie?

A. Yes, sir.

Q. Do you know where the narrows are in Saltpeter cañon?

A. Yes, sir.

Q. State whether or not, until about a year ago, there was any way to get a wagon up above the narrows of Saltpeter cañon.

A. There was not.

Q. It was stated on the stand, yesterday, by a witness, that some posts had been cut in Saltpeter cañon, up above the narrows. Do you know whether or not there were any cut there?

A. I never saw any cut there. They weren't hauled down the cañon, if they were.

Q. If you were to extend the line of Dawson's rock fence eastward, or on the course that it takes across the cañon, it would cross Saltpeter cañon not far from where the Horseshoe-pasture fence crosses it, would it not?

A. I don't know about that. It seems to me it would cross a little above, though I don't know.

Q. It would be not very far, one way or the other, from the fence, you think?

A. I don't think it would be very far.

Q. Do you know where the Maxwell Company's beef pasture is?

A. Yes, sir.

Q. It runs over what country?

A. It starts right about at the narrows, in Saltpeter cañon, and runs kind of north, until it gets up the top of the divide. I
413 don't know that it runs exactly north. It runs up the divide, between Saltpeter and Crow creek; takes in most of Saltpeter, leaves out a little branch of one cañon, and crosses the cañon, and runs down the divide to what is known as Dead Horse and Five Dollar cañon, and strikes into the Caliente.

—. Here is a little plat (showing witness small map). Here is Dawson's southern line, here; here is an extension of that rock fence. Now, that fence of the Maxwell Company starts in that cañon, somewhere, don't it?

A. Yes; it starts in here, somewhere (indicating on map).

Q. And runs around up on this divide?

A. Yes, sir.

Q. And around up here, and about the head of Dead Horse cañon?

A. Yes, sir; and runs down to Dead Horse and Five Dollar cañons. It crosses Five Dollar cañon here, and runs over and joins onto a little strip of fence Terhune built in there.

Q. So, practically, then, that fence is around on the outer boundary of this land claimed by Dawson, is it not?

A. Yes, sir.

Redirect examination by Mr. FRANK SPRINGER:

Q. You stated, in answer to a question of Mr. Jones, that it was generally understood around there that Dawson claimed to own his land. I will ask you what land you mean by that—whether you mean the land within his enclosures, or whether you mean the land in this cattle range we have been speaking of?

A. I don't know hardly how to answer that question. He claimed to own more land than was within his enclosures.

Q. Your answer to his question was: "It was generally understood that Dawson owned his lands." Now, I want you to
414 explain just what land it was that it was generally understood he claimed to own.

A. All I know is hearsay. I know it was generally understood that he had bought a certain distance up and down the Vermejo, from Maxwell, including the drainage. That is about all I ever heard about it.

Q. Was it understood this included all this land where his cattle ranged?

A. There was very little talk, so far as that goes. There was some discussion about it, too, I guess.

Q. In anything you heard, by which you say it was generally understood, was there any attempt to define his boundaries—to say just what his boundaries were?

A. Any attempt by him?

Q. Yes, sir.

A. Really, I could not say.

Q. Was it generally understood what his boundaries were, as he claimed them?

A. Well, only in this way: It was generally understood that he claimed the drainage, and everybody knew what that was, you know.

Q. What you mean to say is, it was generally understood he claimed the drainage of the Vermejo?

A. Yes, sir.

Q. When did you first hear of that?

A. I could not say when it was. I- has been some years ago; probably somewhere along in 1876 or 1877. It was before 1880.

Testimony of Juan Jose Martinez.

JUAN JOSE MARTINEZ sworn.

Direct examination by FRANK SPRINGER:

Q. Where do you reside?

A. I live at El Rito Atravasado.

Q. Where is that?

415 A. At Raton, on the other side of the Sugarite, towards Colorado.

Q. Is that in the county of Colfax?

A. Yes, sir.

Q. How long have you lived in the county of Colfax?

A. About eighteen years.

Q. In what part of the county have you lived during that time?

A. On the Vermejo.

Q. Do you know John B. Dawson, the defendant here?

A. I have known him for about nineteen years.

Q. Do you know where he lives?

A. Yes, sir.

Q. Has he lived at the same place ever since you knew him?

A. Yes, sir.

Q. How, how far from his place did you live?

A. About fifteen miles.

Q. Above or below?

A. Above.

Q. Have you been on his place, where he lives?

A. Yes, sir.

Q. Have you ever been around in the hills, and mountains, and cañons, in that neighborhood?

A. Yes, sir.
Q. You know a cañon called Rail cañon?
A. Yes, sir.
Q. Do you know a cañon called Saltpeter cañon?
A. Yes, sir.
Q. And Coal cañon and Lacey cañon?
A. Yes, sir.
Q. Have you ever been in those cañons?
A. Yes, sir.
Q. How frequently?
A. About twice a year, sometimes.
416 Q. When was the first time you ever went into those cañons?
A. About 1874.
Q. How did you travel through there—afoot or horseback?
A. On horseback and foot, both.
Q. How much time did you spend in and about those cañons during that year?
A. Sometimes I would stay as long as two days, sometimes as much as four days at a time.
Q. In what parts of those cañons did you travel, from time to time?
A. Up at the heads of the cañons; also down below the cañons.
Q. Did you camp in them at any time?
A. Yes, sir.
Q. Do you know the brands of cattle that were running through that country, or any of them?
A. Yes, I do know some of the brands.
Q. When you were in Rail cañon during those early years did you see any cattle in there?
A. Yes, sir.
Q. Did you see cattle in the other cañons you have mentioned?
A. Yes, sir.
Q. Do you know who those cattle belonged to?
A. I knew some of the brands.
Q. Whose were some of them, that you can recollect?
A. I saw cattle of Pat. Lyons, Mr. Wolf, and other brands, whose owners' names I did not know.
Q. Did you see any cattle of Dawson running in there?
A. Yes, sir.
Q. How did the number of Dawson's cattle compare with that of others—which was the most?
417 A. I could not tell which was the greatest number. I saw them just while I was going by.
Q. Was anybody in charge of them, or were they running loose?
A. They were running loose. I never saw any one with them.
Q. Were Dawson's cattle running loose, also?
A. I understand they were, because I saw some of Dawson's cattle there.
Q. Well, during how many years after that did you go, from time to time, into those cañons?

A. For about fourteen years.
Q. Did you travel in there every year during that time?
A. Yes, sir.
Q. Did you see any cattle in those cañons during every year?
A. Yes, sir.
Q. Were the cattle of different persons in there?
A. Yes, sir.
Q. During all these fourteen years, were the cattle kept under herd, or were they running loose?
A. They were running loose.
Q. Where did you generally see the cattle—in what part of this region?
A. I used to see the cattle scattered in the cañon, from the mouth up to the head of the cañon.
Q. Where did they generally graze—in the bottom of the cañon, or on the sides?
A. On the sides of the cañon.
Q. In the bottom of the cañon, what kind of grass or grazing is there?
A. Pretty fair.
Q. Did the cattle graze down in the bottom of the cañons, also?
A. Yes, sir, just the same.
418 Q. During these fourteen years, did you ever know of any cattle being driven out of that region by Dawson or his people?
A. No, sir.
Q. Ever hear of his objecting to the cattle of other people grazing in there?
A. No, sir.
Q. From what you observed of the cattle running there, of different people, was that a public range or a private range?

Objected to as leading and suggestive.
Objection sustained by the court.
Exception reserved by plaintiff's counsel.

Q. State whether or not that range was used commonly by cattle owners, generally, around that country.

Objected to.
Objection sustained.
Exception reserved by Mr. Springer.

Q. Whose cattle grazed on this range—I mean to say, generally and habitually?
A. I have already stated, the cattle of different owners.
Q. I will ask you, whether that range was open to the cattle of different owners, throughout that country, to graze there, wherever they pleased.

Objected to.
Objection overruled.
Exception reserved by defendant's counsel.

A. Yes, sir.

Q. What were you doing up on the Vermejo, about fifteen miles above Dawson's place?

A. I was living there.

Q. What was your occupation?

A. Farming my ranch; also taking care of the animals I had.

Q. What animals did you have?

A. I had cattle and horses.

419 Q. How many cattle did you have?

A. I could not tell how many I had.

Q. Did you have more than a half a dozen?

A. I believe I did have more.

Q. Did you have more than ten?

A. Yes, sir, I believe I did.

Q. Did you have a dozen?

A. Yes, sir.

Q. How many more than a dozen did you have?

A. I had a dozen.

Q. And that was all you had?

A. Yes, sir.

Q. They were milch cows, weren't they?

A. Some of them; others were not.

Q. And the others were yearling and calves, and so on, were they not?

A. Yes, sir.

Q. You kept them up there, near your range, didn't you?

A. Some of them I kept right near the range, and others strayed away to other places. I didn't have them under herd.

Q. As a rule, they were right there, about your range, weren't they?

A. Yes, some of them; and the others would stray away, because I was not looking after them all the time.

Q. You were cultivating your crops nearly all the time, were you not?

A. Yes, sir.

Q. Where is Spring cañon?

A. It is north, on this side of Dawson's ranch.

Q. Well, what other cañons are near by?

A. There are other cañons there. I don't know the different names.

Q. You don't know the names of those cañons, then?

420 A. I know the names of some of the cañons, but I only know the Spanish names for them. I don't know the American names they have, except Lacey cañon.

Q. Can you tell me which cañon is Rail cañon?

A. Yes, I do know where it empties into the river. I can tell you which one it is.

Q. That is over on the west side of Dawson's house, is it not?

A. No, sir; it is to the other side.

Q. Describe, in some way so the jury can understand, where Spring cañon is.

A. I know the name of it in Spanish; I don't know it in English.

Q. What is the name of it in Spanish?

A. I don't know whether that is the same cañon that is called Spring cañon, or not.

Q. What is the Spanish names of the other cañons?

A. On the other side is one called Terhune cañon, that empties on this side of Dawson's house.

Q. How long has that been called the Tahoon, or Terhune cañon?

A. I have always heard that name for it since I have been living at the place.

Q. Who told you that the name of that cañon was the Terhun. cañon?

A. In common, amongst the Mexican people that lived up above, that was called Terhune cañon.

Q. Is there a wagon road runs up it?

A. No, sir.

Q. How long did you live fifteen miles above Dawson's place?

A. For about eighteen years.

Q. Do you live there now?

A. No

Q. When did you move away from there?

A. Last year.

421 Q. Who told you the English names of those cañons?

A. The different people used to mention them.

Q. Did Mr. Harry Whigham tell you the names of these cañons?

A. I don't know Mr. Whigham.

Q. Did Celso Chavez tell you the names of these cañons?

A. No, sir.

Q. Did Mr. Catron tell you the names of the cañons?

A. No, sir.

Q. Who has told you the names of these cañons within the past two weeks?

A. No one has given me the names of the cañons. I knew them already.

Q. Did you tell anybody what you were going to swear to on the stand?

A. No, sir.

Q. Never have told any one what you were going to testify to?

A. No, sir.

Q. Did anybody tell you what they wanted you to testify to?

A. No, sir.

Q. Didn't you talk with Mr. Catron all about this case?

A. No, sir.

Q. You haven't talked with Mr. Catron about this case?

A. No, sir.

Q. Haven't you talked with Mr. Whigham about this case?

A. No, sir.

Q. Have you talked with Mr. Pels about this case?

A. Neither.

422 Q. Have you talked with Celso Chavez about this case.

A. No, sir; I have not.

Q. Were you summoned to come down here as a witness?
A. Yes, sir.
Q. Who summoned you?
A. Antonio Chavez.
Q. Is he a brother of Celso Chavez?
A. Yes, sir.
Q. Did you talk with him about this case?
A. I did not know what I was subpœnaed for. I knew I was subpœnaed to testify about some land. I didn't know what land it as until I was put up here on the stand.
Q. The first time that you were ever in Saltpeter cañon, what were you doing there?
A. Looking after some stray animals that had strayed away.
Q. You think that you were in those cañons about twice a year?
A. Yes, sir.
Q. What time of year were you there the first time?
A. In June.
Q. Which cañon were you in that time?
A. In Saltpeter cañon and these cañons that empty into the river.
Q. You were in all of them that year, were you?
A. Yes, in that month; during those days, I was in those cañons.
Q. Do you know where that prairie-dog town is in Spring cañon?
A. I didn't notice it.
Q. Didn't you notice one in any one of those cañons?
A. No, sir.
423 Q. Do you know where the forks are in Lacey cañon?
A. I don't know, because I didn't pay much attention as that.
Q. Do you know where the narrows are in Saltpeter cañon?
A. Yes, I do know in some places the cañon is narrow, and in other places it is not.
Q. How many of such places are there?
A. At that place, where I was over it, there are only two places.
Q. Then, you only crossed over two of the narrow places in Saltpeter cañon?
A. Yes, sir.
Q. Well, how far is it from the head of that cañon down to the springs?
A. About two miles.
Q. Do you know what Pat. Lyons' brand was?
A. Yes, sir.
Q. What was it?
A. P. L. I can draw the brand for you if you want it.
Q. What was Wolf's brand?
A. N.
Q. Do you know Frank Curtis?
A. Yes, sir.
Q. Do you know his cattle brand?
A. Yes, sir.
Q. What is his brand?
A. M.

Q. Do you know Dawson's brand?
A. Yes, sir.
Q. What is his brand?
A. Three crosses and a bar in the center.
Q. Didn't Dawson have more than one brand?
A. Another brand of his was the letter S.
424 Q. Was that a cattle brand?
A. I don't know. I saw that brand on his horses.

Mr. SPRINGER, to court: It is admitted by counsel that the persons whose names are mentioned, as being heirs of Charles Beaubien, in the deeds which are already introduced in evidence, are the only heirs-at-law of Charles Beaubien, as recited in the said deeds.

Mr. SPRINGER, to court: I now desire to offer, in evidence, certified copies from the records of the probate clerk of Colfax county, of the deeds of Lucien B. Maxwell and wife to Miller and Maulding. Also, a deed from Lucien B. Maxwell and wife to Joel W. Curtis, all showing the conveyance of certain lands on the Vermejo river, in Colfax county, N. M., within the Beaubien & Miranda grant, dated January 7, 1869, duly acknowledged and recorded.

Mr. JONES: I object to the introduction of the deeds, because they have no relation to the land in controversy; and because they are certified copies only, and no foundation has been laid for their introduction; and because they do not embrace any of the land in controversy, and are incompetent, irrelevant and immaterial.

The COURT: I will sustain the objection to the introduction of the deeds.

Exception reserved by plaintiff's counsel.

Mr. SPRINGER: If your honor sustains the objection, on the ground that foundation has not been laid, I will lay the foundation for their introduction by my own testimony.

The COURT: I think it would be hard to bind this defendant by recitals in a deed of a third party.

It is admitted and agreed by counsel that the deeds from Lucien B. Maxwell and wife to Maulding and Miller and Curtis, of which counsel for plaintiff in error offered to introduce certified copies in evidence at the trial (Rec., folio 1694), were duly executed and acknowledged and recorded; that said deeds were both dated January 7th, 1869, and purported to convey certain lands lying on both sides of the Vermejo river below the lands in controversy, and that the lands so conveyed are described in said deeds as "all the land or ground suitable for farming or tillable or cultivating purposes in the valley or drainage of the Vermejo river" within certain boundaries, which boundaries are described by reference to natural objects, such as rocks and trees, and that no area or acreage is mentioned therein, nor is there anything in the deeds themselves whereby without other evidence the amount of land thereby conveyed could be determined.

Testimony of L. S. Preston.

L. S. PRESTON sworn.

Direct examination by Mr. FRANK SPRINGER:

425 Q. You have already testified, I believe, that you are acquainted with the country in and about Rail cañon.

A. Yes, sir.

Q. I will ask you if you have ever made an examination of the grant along Rail cañon, and adjacent to it, with reference to the presence of coal there?

A. Yes, sir.

Q. Have you observed any coal there?

A. Yes, sir. The first time I was ever in the cañon, I could see coal.

Q. Well, state to the jury to what extent, and in what places, you have observed coal there?

A. Well, at a distance of about two miles from the mouth of the cañon, there is a prominent coal seam on the right-hand side of the cañon as you go up. A small tunnel has been run in there several years ago, and I think there is a seam of six feet of coal and shale together.

Q. How far up the cañon does that extend.

A. At about one mile above the coal disappears under the bed of the cañon.

Q. What is the character of that coal deposit, with regard to its stratification, at the places you have observed it?

A. It lies in a horizontal bed or seam, almost perfectly level, and crops out on both sides of the cañon.

Q. Have you observed the outcropping of that coal bed at any other locality on the tract claimed by Mr. Dawson—I mean the tract claimed by him in this suit?

A. Yes, sir.

Q. Where?

A. There is a small cropping on the west side of the divide, between Rail cañon and the Vermejo, and as I said the other day, a small seam in Coal cañon.

426 Q. How far distant are these last-mentioned outcroppings from those in Rail cañon?

A. Well, the one between Rail and Vermejo is a mile or a mile and a half from the cropping in Rail cañon. The cropping in Coal cañon is three miles, at least, from Rail cañon.

Q. What is the thickness of the coal bed as you have observed it in Rail cañon?

A. Why, it is one solid seam about three and a half feet in thickness and several small seams a foot or two in thickness.

Q. Is the coal in that large seam valuable for any purpose; if so, for what?

A. It is the same quality of coal as is used by the Santa Fé Railroad Company in New Mexico.

Q. For what purpose, if any, is it valuable?

A. For fuel.

Q. What is the character of the surface of the country between Rail cañon and the next cañon to the north and south of it, or to the east and west of it, whichever the direction may be?

A. It is high rocky mesas and ridges lying between Rail cañon and the Vermejo, and Rail cañon, Spring, and Saltpeter cañon.

Q. Over about what area have you traced the existence of that coal bed within the tract of land claimed by Dawson in this suit?

A. From this upper point of Rail cañon, where the coal disappears under the formation, to about three miles to the southwest in Coal cañon. I never examined the coal croppings in Lacey cañon, although I have been told of them. I have seen evidences of coal in lower Spring cañon, and there is a large seam crops along the cañon side something like one-half a mile above Dawson's dam, outside of his line.

Q. Over what area of land, approximately, as far as you
427 can observe from your observations within the tract of land claimed by Dawson in this case, have you traced the existence of that coal bed?

Q. Over an area of three miles by about two miles, it is to be seen in different points, observed from the geological formation. The supposition is well founded that it underlies practically the whole tract, except where the cañons cut below.

Q. Confine it to what you have actually seen. You say it covers an area of three by two miles?

A. Yes, sir.

Q. Have you been over the ground on either side of Rail cañon, and between that and the Vermejo?

A. Yes, sir; over a portion of it.

Q. I refer more particularly to the land outside of the cañons, and on the higher ground. To what extent are you acquainted with that ground?

A. I have crossed the tract from Rail cañon to the Vermejo, and I have been around the foot of the mesa, repeatedly.

Q. Are you acquainted with the commercial value of coal of the character that you have observed on that tract?

A. Yes, sir; in this locality.

Q. Well, now, taking the land that is underlaid by the coal, as you have observed it, and from your observation of the surface of that land, for what is it principally valuable?

A. Why, the coal underlying this mesa country is, without doubt, more valuable than for any other purpose that the land could be put to.

Q. What do you say that the land which contains this coal is chiefly valuable for—on account of its coal, or any other purpose?

A. I would say on account of its coal.

Cross-examination by A. A. JONES:

Q. Have you ever been in the coal business?

428 A. No, sir.

Q. Have you ever worked in coal formations?

A. I have done some prospecting and examinations.

Q. State the extent of it.

A. Well, I have studied geology of coal formations, in my course in college. I have examined one or two large coal mines in Colorado. I have prospected myself, and been through many prospects of coal veins in Middle park and North park, Colorado. I have examined the coal formations wherever it crops, over the great extent in the Maxwell grant.

Q. How much coal is there on the Maxwell grant?

A. I have seen an estimate made by coal experts.

Q. What was that estimate?

A. I- seems to me, it was one billion tons. I would not speak positive.

Q. How much coal land have you observed on the Maxwell grant?

A. Why, it crops out repeatedly in nearly every cañon, for thirty miles in length.

Q. Are the coal lands of the Maxwell Company nearer to the railroad than this land of Dawson's?

A. There is some of the coal lands nearer to the railroad, and others are farther away.

Q. The Maxwell Company has been furnishing the railroad with coal, has it not, from its coal lands near the railroad?

A. I understand the railroad company has a lease, or contract, and is working the coal veins itself.

Q. I will ask you if there is any possible market for that coal on Dawson's place, at the present time? Could a person mine it and sell it to any advantage at all, at the present time?

A. I would say yes, even at retail; but that is a small matter, compared with the possible, or future, value of these coal lands.

429 Q. I am not asking about that. How much do you suppose could be sold at retail to an advantage?

A. In the little town of Maxwell City we use not less than 150 tons a year.

Q. That is on the railroad?

A. That is used within a mile of the railroad. There is a very large scope of settled country between there and Dawson's place, sixteen miles away.

Q. Maxwell City is on the railroad?

A. Yes; the coal is shipped a distance of thirty miles.

Q. How far is it by the ordinarily traveled road from Dawson's place to Maxwell City?

A. Sixteen miles, by the road.

Q. Do you think it would be possible for an individual to haul coal sixteen miles, by wagon, as cheaply as the railroad company would haul it thirty miles by rail?

A. Some of the settlers have mined their own coal in Curtis cañon; hauled it a distance of ten miles, this winter.

Q. They didn't sell any of it?

A. Well, they mined the coal, themselves, and hauled it.

Q. Haven't the people who bought land on the prairie, from the

Maxwell Land Grant Company, got a right to fuel anywhere they can get it, on the grant?

Objected to.
Objection overruled.
Exception reserved.

A. I think to fire-wood only.
Q. There is plenty of fire-wood, isn't there, on that grant?
A. Yes, there is considerable fire-wood.
Q. Not likely to be exhausted for some years to come?
430 A. That would depend on the population.
Q. Some coal has been mined on Dawson's place, hasn't there?
A. There are two prospect tunnels that I know of?
Q. Where are they located?
A. There are two in Rail cañon.
Q. How far up from the mouth of that cañon?
A. About two miles; and, the second one, about one-half mile above.
Q. Any been mined over in Coal cañon?
A. I have been told that there is a tunnel cut in Coal cañon, but I don't recollect that I ever examined it.
Q. The general demand for coal in that country has been supplied from Blossburg, has it not, and that vicinity?
A. Not off of the railroad any distance.
Q. Did you ever, in your life, hear of anybody peddling coal around the country, in a wagon, there?
A. Yes, sir.
Q. Where?
A. At the town of Cimarron.
Q. How much coal was sold there?
A. They supplied the Cimarron blacksmith, to a great extent, and the Springer blacksmith.
Q. How far is that from the railroad?
A. They hauled it twenty or twenty-two miles to the railroad.
Q. Then, how many tons a year do you suppose these two blacksmiths would use?
A. Twenty or thirty tons.
Q. You think that would be sufficient to justify a man engaging in the coal business, up there, do you?
A. I don't think the coal business, at retail, in that manner, would ever be very profitable.
431 Q. Have you ever known coal mines to be profitable away from the railroad, or some kind of track to get the coal to the railroad, with the probable exception of where the mines are very near the railroad?
A. A railroad is necessary for the transportation of coal.
Q. Mr. Preston, I understood you to state, the other day, that there were mesas around over this property. Are not these mesas good for cultivating purposes?

A. The tops of them might be cultivated. They have never been used for that purpose.

Q. Well, at that elevation, crops can be raised without irrigation, can they?

A. Crops have been raised at the elevation of some of the higher mesas, a difference of several hundred feet.

Q. Take the heads of the cañons—could not reservoirs be put up there, and the lands actually irrigated?

A. I think it would be possible, to some extent.

Q. Could not a higher ditch be taken out of the Vermejo, and a number of acres of land be put under cultivation and irrigation, in Rail cañon?

A. Yes, sir; I have so indicated on the map there.

Q. As much as fifty or sixty acres?

A. Yes, sir.

Q. And the same way in Coal cañon?

A. Yes; it would only be a question of expense.

Redirect examination by FRANK SPRINGER, Esq.:

Q. Referring to map: I want to ask you what that is there. Is that the "rocky point"?

A. Yes, sir.

Q. Is it high or low?

432 A. It is high. In the neighborhood of five hundred feet above the cañon.

Q. I wish you would mark the word "rocky point" on there with a pencil.

Witness did so.

Plaintiff rests.

Surrebuttal Testimony Introduced by Defendant.

Testimony of Zenus Curtis.

ZENUS CURTIS sworn.

Direct examination by A. A. JONES:

Q. Were you acquainted with the character of the range in and about the heads of Saltpeter and Rail cañons, from the years 1875 on?

A. Yes, sir.

Q. Were you acquainted with the character of the range over in the cañons leading into the Caliente, Five Dollar, Dead Horse cañon-, and along there?

A. Yes, sir.

Q. State, whether or not, there was any difference in the character of the ranges in these cañons.

A. There was not any difference as to the grass and pasturage.

Q. Do you remember, Mr. Curtis, when a man named Coleman went into Saltpeter cañon?

A. I remember of him going in there. I don't remember what year it was.

Q. Do you remember the circumstances of his going there?
A. Yes, sir.
Q. Now state, whether or not, there was a log house in that cañon at that time?
A. There was not.
433 Q. Do you know what became of that log house that was there?
A. Yes, I know what became of the house that was in there before Coleman went there.
Q. State what became of it.
A. Gus Dawson and I tore it down to build a corral to brand some calves in.
Q. That was before Coleman went in there?
A. Yes, sir.
Q. Where did Coleman live?
A. He lived at a place on the Vermejo, at the mouth of the place they called Stout cañon, at that time.
Q. Did he ever have any permanent residence over in the Saltpeter cañon?
A. No, sir, he didn't have any permanent residence there.
Q. State what he did have over there, if anything.
A. He had some provisions under a rock, over there, at one time.
Q. What did he do with the cattle he had there?
A. He sold them to Mr. Dawson.
Q. Do you know when Mr. June Hunt first went in on the Caliente?
A. I know about the time. It was either 1875 or 1876.
Q. He was up on Red river, for awhile, was he not?
A. Yes, sir.
Q. State how Mr. Hunt's cattle ranged up until the year 1880.
A. Why, they ranged on the range, but they confined themselves to a couple of cañons.
Q. Where are those cañons?
A. On the Caliente and Cottonwood cañons; and, then, from there on up Red river.
434 Q. Were you frequently around that country during those years?
A. Yes, sir.
Q. Do you know whether Mr. Hunt's cattle were inclined to drift southward onto this property of Mr. Dawson's, or in any other direction?
A. They did not drift very much south, not until very late years.
Q. Their former range had been on Red river, hadn't it?
A. Yes; that is, when they first came into the country.
Q. In what direction from the Caliente was Hunt's former ranch—before he moved to Caliente?
A. On the Red river?
Q. Yes, sir.
A. I think it was very near north.
Q. Were his cattle inclined to drift back in that direction?
A. Yes, sir.

Q. Do you remember, Mr. Curtis, the circumstances of the Croker outfit wanting to build a beef pasture on a part of this land claimed by Mr. Dawson?

Objected to by plaintiff's counsel as not proper surrebuttal evidence.

Mr. JONES: I desire to show that this matter was discussed in the presence of the witness, Hunt, and thereby contradict the witness, Hunt.

Objection overruled.

Exception reserved by plaintiff's counsel.

A. Yes, sir, I remember it.

Q. Do you remember any conversation in the presence of one June Hunt, in reference to that?

A. Yes, sir, I remember it.

Q. State what was said in the presence of Hunt.

Mr. SPRINGER: I desire to have it understood that all this goes in over our objection and exception.

435 The COURT: Very well.

A. I remember that the Croker outfit and association were talking about building a pasture in this Saltpeter cañon—in the head of it—and some one came up from Dawson's and said that Dawson objected to us building a pasture there, and Hunt said he would like to know some way to build a pasture in there, to spite Dawson. He didn't say it in those words, but it amounted to the same.

Counsel for plaintiff objects to the latter part of witness' answer being given to the jury, on the ground, that the same is an argument by witness, and is improper in the highest degree.

Objection sustained.

The latter part of witness' answer was taken from jury.

Q. Were there any reasons stated at that time why Dawson objected?

A. Yes, sir.

Q. State what they were.

Objected to.

Objection sustained.

Cross-examination by Mr. FRANK SPRINGER:

Q. What Coleman was this, you say, lived under a rock in Saltpeter cañon?

A. Jim Coleman.

Q. What was he doing up there, while he lived under that rock?

A. He had cattle there.

Q. Where were his cattle ranging?

A. They were ranging in Caliente and Saltpeter.

Q. What year was that?

A. I don't remember what year it was.

Q. You say that there was no house there during the time he occupied Saltpeter cañon?

436 A. No, sir; there was no house there.

Q. But you say there had been a house there before?

A. Yes, sir.

Q. How long before that had there been a house there?

A. About two years, I guess.

Q. Do you mean that it was two years before that, that the house was torn down?

A. It was about that time; yes, sir.

Q. Who put that house there?

A. A fellow named Bohannan.

Q. What was he doing there?

A. I don't know what he did intend to do there.

Q. I want to know what he did do?

A. He was camping there.

Q. Was he camping there in that house?

A. Yes, sir.

Q. When did he put the house there?

A. I don't remember when he put it there.

Q. How long before you and Gus Dawson tore it down?

A. I don't remember how long it was.

Q. Was the house old or new when you helped tear it down?

A. Well, the logs were sound.

Q. Was it a new house, just finished or constructed, or had it been there for some time?

A. It had been there some time.

Q. What was Bohannan doing there when he was occupying that house?

A. He was just camping there. I don't know as he was doing anything, but camping there.

Q. Did he have some cattle there?

A. No, sir.

Q. Didn't he have any cattle there at all?

437 A. No, sir. I don't think he had any cattle there at all.

Q. Was he farming?

A. No, sir.

Q. Just had a residence for pleasure there, did he?

A. I don't know whether it was for pleasure or not.

Q. Were you ever up to the place, while he was living there?

A. I was.

Q. How many times?

A. Several times.

Q. Did you see Bohannan when you visited that place?

A. Yes, sir.

Q. Talk with him?

A. Yes, sir.

Q. Yet you don't know what he was doing up there?

A. No, sir; I don't know what he was doing up there.

Q. How long did Coleman live there under that rock?

A. Well he just camped there off and on.

Q. For how many years?
A. For a year and a half or two years.
Q. Who was the man that came up from Dawson's and said that Dawson objected to the Croker outfit building a fence there?
A. I am not positive, but I believe it was my brother, Tom Curtis.
Q. You are not positive about that, though?
A. No, sir, I am not.

Testimony of Marion Littrell.

438 MARION LITTRELL sworn.

Direct examination by A. A. JONES:

Q. Prior to 1880, did you ever drive any cattle out of Coal cañon?
A. I don't remember, prior to 1880, about Coal cañon.
Q. How about Lacey cañon?
A. I think, I have driven cattle out of Lacey cañon.
Q. Prior to 1880, how many times?
A. I could not say; not very often.
Q. Did you drive them out of the head of Lacey cañon, prior to 1880?
A. Lacey cañon is a very small cañon, and, as a rule, I don't think very many cattle ever run in there, but lower down on the cañon I have driven cattle out.
Q. Did you ever drive any cattle out of there from above the forks in that cañon?
A. No, sir; I never did.
Q. How far down towards the mouth of Rail cañon did you ever drive any cattle out?
A. That is rather hard to remember, but I would say down as far as within a couple of miles of the mouth of it.
Q. Prior to 1880, what was the closest distance to the mouth of that cañon you ever drove cattle out of there?
A. I don't know the distance. There is some springs up there, and we generally drove down as far as the springs. I don't know how far it is from the mouth.
Q. These springs are up three or four miles?
A. There are some springs up that far, then I think there are some lower down.
Q. How far down, prior to 1880, did you drive cattle out of there?
A. I can't remember how far down. We were in there different times hunting cattle; as for stating the exact distance, I don't believe I could do it.
439 Q. Did you ever find any cattle below the mouth of the cañon, where the rails were made—I mean prior to 1880?
A. I could not say.
Q. Well, in Rail cañon, where did you find the cattle principally, that you did find?
A. The majority of the cattle ranged up near the head of the cañons.

Q. Well, did you observe the range running into the head of Rail cañon, Saltpeter cañon, Dead Horse cañon, and Five Dollar cañon?
A. Yes, sir.
Q. Did you observe that range during the years from 1875 up to 1880?
A. Yes, sir.
Q. Well, state what, if any, difference there was in the character of the range, as to the pasturage in these different cañons.
A. In regard to grazing?
Q. Yes, sir.
A. I could not find any difference.
Q. Do you know whether or not Jim Coleman ever lived in a house up in Saltpeter cañon?
A. I never knew him to live in a house.
Q. Had there been a house up in that cañon?
A. Yes, sir.
Q. Do you know whether or not it was taken away before Coleman went there?
A. I could not say whether it was taken away before he went there or not, but I would say it was; if it had been there he would have camped in it, I guess.
Q. Where did he camp?
A. Under a projecting rock. A kind of bluff.
Q. Where was his home at the time he was in there?
A. To the best of my recollection it was on the Vermejo.
440 Q. At the old Stout place?
A. Yes, sir.

Cross-examination by Mr. FRANK SPRINGER:

Q. Do you recollect what year it was Coleman was camped under the rock in Saltpeter cañon?
A. Why, it was in 1880, I think.
Q. How long had he been there before?
A. I could not say, but I remember his being there in 1880.
Q. It was before that you saw his house there?
A. Yes, sir.
Q. Do you remember about how long before you saw Coleman there, it was that you saw the house there?
A. Why, I think it was about 1876 or 1877 I saw the house there.
Q. Do you know who built and occupied that house?
A. I think there was two men, named Bohannan and Granger, that built the house.
Q. What were they doing?
A. I suppose they took it up for the purpose of a cow ranch.
Q. Did they have any cattle there?
A. I don't think they did.
Q. How long did they stay there?
A. I could not say.
Q. Did they occupy the house?
A. Yes, sir.

Q. Do you recollect for how long?
A. No, sir.
Q. More than one season?
A. I could not say.
Q. When you spoke in answer to Mr. Jones' question of driving cattle out of Rail cañon and part of Lacey cañon, what cattle did you refer to?
441 A. The cattle we were representing. The men we were working for.
Q. You mean by that, on the round-ups, do you?
A. Yes.
Q. Or the branding hunts?
A. Yes, sir.
Q. Well, did you find any of these cattle, from time to time, about these springs in Rail cañon?
A. Yes, sir.
Q. Was that not quite frequent, that you found them at that place?
A. Yes, sir.
Q. About how far is the last of those springs from the mouth of the cañon?
A. It is some two or three miles. I could not say, though.
Q. What cattle did you generally find around those springs?
A. Always a mixed lot of cattle, some of most everybody's—cattle belonging to different parties.

Redirect examination by A. A. JONES:

Q. Did you ever see any cattle in Rail cañon any considerable distance below these springs, other than the cattle of Mr. Dawson.
A. Well, sir, I could not say about that. I don't remember.

Testimony of George R. Denise.

GEORGE R. DENISE sworn.

Direct examination by A. A. JONES:

Q. Have you calculated the distance from the mouth of Saltpeter cañon up to the line claimed by Mr. Dawson in this suit; the line of this rock fence, where it crosses the river?
442 A. Yes, sir. I calculated the distance from the mouth of Saltpeter to where Saltpeter intersects Dawson's lower line.
Q. What is that distance?
A. It is 1,670 feet over six miles. It is six miles and about one-third of a mile.
Q. Do you know where the lower line of what is called the O'Donnell farm, is?
A. At a point where it crosses the Vermejo, it was identified to me.
Q. And all these cañons that have been spoken of in this suit—I mean Lacey cañon, Coal cañon, Spring cañon, Rail cañon and Saltpeter cañon—empty into the Vermejo above that line?

A. Yes, sir. I made measurements from the stone wall down, and they all empty into the Vermejo river above the line of the O'Donnell farm.

Testimony of A. G. Dawson.

A. G. DAWSON sworn.

Direct examination by A. A. JONES:

Q. Do you know where the extended line of the rock fence crosses Lacey cañon?

A. Yes, sir.

Q. State whether it is above or below the rocks of that cañon, that has been mentioned in the testimony here?

A. About one or two hundred feet above the forks.

This was all the testimony introduced in said case.

Case closed.

443 *The Judge's Charge.*

District Court for San Miguel County.

MAXWELL LAND GRANT CO., Plaintiff,
vs.
JOHN B. DAWSON, Defendant.

Instructions of the court.

I.

GENTLEMEN OF THE JURY: To make the issue submitted to you for determination as simple as possible, it may be stated, as the substance of the contention between the respective parties, that the plaintiff asserts that it is the owner and entitled to the exclusive possession of that certain tract of land, situate in the county of Colfax, in this Territory, embraced within the following boundaries, to wit: Beginning at a dam on the Vermejo river, at a place designated in the pleadings of the defendant as the upper end of defendant's farm; running thence to a high point of rocks on the north side of the Vermejo cañon; thence, along the top of the divide west of Rail cañon, to the head of Saltpeter cañon; thence, down along the top of the divide east of Saltpeter cañon, to a point on a line with a rock fence; thence, following the line of said rock fence across the Vermejo river, to the top of the divide between said river and Van Bremmer cañon; thence, following the top of said divide, to the head of Coal cañon; and thence, along the top of the divide east of Coal cañon, to a point on said divide nearest the place of beginning; and thence to the place of beginning; except such part of that tract as the plaintiff in its amended replication concedes is the property of the defendant.

The defendant denies the truth of the plaintiff's assertion of ownership, and of its right to the possession of said tract of
444 land, and alleges that he is the owner of all said tract, and entitled to its exclusive possession.

II.

In support of its ownership and right of possession, the plaintiff relies exclusively upon certain patents, documents, deeds, and other papers introduced in evidence, whilst the defendant rests his title, ownership, and right of possession upon the fact that he had held, when this suit was commenced, adverse, open, public, and uninterrupted possession of all the said tract for the full period of ten years or more.

Hence, you are instructed, that said patents, documents and deeds, and other papers introduced in evidence by the plaintiff in support of its assertion, are sufficient without further proof, to vest the legal title to the whole tract of land in controversy in the plaintiff, and to authorize plaintiff to take the possession thereof, unless the defendant has established by a preponderance of the evidence, that he had held adverse possession thereof for a period of ten years or more before the commencement of this suit, as hereinafter more fully explained to you.

III.

You are instructed that the plaintiff has proved its ownership and right of possession by the documentary evidence introduced, unless the defendant has established, by a preponderance of the evidence, the fact that plaintiff had, before the commencement of this suit, forfeited such ownership and right, by virtue of the defendant's complying with the law giving to adverse occupants superior title and rights, as hereinafter more fully explained to you.

IV.

The law invoked by the defendant, to support his conten-
445 tion, is found in sections 1880 and 1881, of the Compiled Laws of this Territory, which reads as follows:

SECTION 1880. In all cases where any person or persons, their children, heirs or assigns, shall, at the passing of this act, or at any time after, having had possession for ten years, of any lands, tenements, or hereditaments, which have been granted by the governments of Spain, Mexico, or the United States, or by whatsoever authority empowered by said governments to make grants to lands, holding or claiming the same by virtue of a deed, or deeds, of conveyance, device, grant, or other assurance, purporting to convey an estate, in fee simple, and no claim, by suit in law, or equity, effectually prosecuted, shall have been set up or made to the said lands, tenements, or hereditaments, within the aforesaid time of ten years, then, and in that case, the person or persons, their children, heirs or assigns, so holding possession, as aforesaid, shall be entitled to keep, and hold in possession, such quantity of lands as shall be

specified and described in his, her, or their, deed of conveyance, devise, grant, or other assurance, as aforesaid, in preference to all, and against all, and all manner of person or persons, whatsoever; and any person or persons, their children, or their heirs or assigns, who shall neglect, or who have neglected, for the said term of ten years, to avail themselves of the benefit of any title, legal or equitable, which he, she, or they, may have to any lands, tenements, or hereditaments, within this territory, by suit of law, or equity, effectually prosecuted against the person or persons, so, as aforesaid, in possession, shall be, forever, barred; and the person or persons, their children, heirs, or assigns, so holding, or keeping possession, as aforesaid, by the term of ten years, shall have a good and indefeas*a*ble title, in fee simple, to such lands, tenements, or hereditaments: Provided, That, if any person or persons, that have been, are, or shall be, entitled to commence and prosecute such suit, in law, or equity,
446 shall have been, be, or shall be, at the time of said right, or title, first descended, or accrued, come, or fallen, within the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned, or beyond the limits of the United States and the territories thereof, that, then, such person or persons, his, her, or their children, heirs, or assigns, shall, or may, notwithstanding the ten years be expired, bring his, or her, legal or equitable action, as he, she, or they, might have done before the passage of this act, so, as such person or persons, or his, her, or their children, heirs, or assigns, shall, within three years, next after his, her, or their, full age, discoverture, coming of sound mind, enlargement out of prison, coming into the United States, or the territories thereof, or death, take benefit of, and commence such suit, and at no time after the said three years: Provided, also, That, in the construction of this saving provision, no cumulative disability shall prevent the bar aforesaid, but shall only apply to that, or those, disabilities which existed when the right to sue first accrued, and no other: And, provided, also, That such suit, so commenced, shall be a suit prosecuted with effect, and no other.

SECTION 1881. No person, or persons, nor their children, or heirs, shall have, sue, or maintain any action, or suit, either in law, or in equity, for any land, tenements, or hereditaments, but within ten years next after his, her, or their right to commence, have, or maintain such suit, shall have come, fallen, or accrued, and that all suits, either in law, or equity, for the recovery of any lands, tenements, or hereditaments, shall be had and sued within ten years next after the title or cause of action, or suits, accrued or fallen, and at no time after the ten years shall have passed: Provided, That if any person, or persons, that is, or shall be, entitled to commence and prosecute such suit, or action in law, or equity, be, or shall be, at the time of said right or title first accrued, come or fallen within
447 the age of twenty years, *feme covert*, *non compos mentis*, imprisoned, or beyond the limits of the United States and the territories thereof, that then, such person, or persons, his, her, or their children, heirs, or assigns, shall and may, notwithstanding the said ten years be expired, bring his, or her, suit of action, as he, she, or they might have done before the passage of this act, so as

such person, or persons, his, her, or their children, heirs, or assigns, shall, within three years next after his, her, or their full age, discoverture, coming of sound mind, enlargement out of prison, coming into the United States, or the territories thereof, or death, take benefit of, and commence such suit, at no time after the said three years: Provided, also, That in the construction of this saving exception, no cumulative disability shall prevent this bar, but shall only apply to that, or those, disabilities which existed at the time when the right to sue first accrued, and to no other; Provided, further, That such action so commenced, shall be an action prosecuted with effect, and no other.

Hence, you are instructed, that if the defendant has proved by a preponderance of the evidence that he went into the possession of the tract of land in controversy, claiming the same adverse to the true owner, and continued in the open, exclusive, and uninterrupted possession of the same under such adverse claim, for the period of ten years, or more, before the commencement of this action, he will be deemed, in accordance with the provisions of the statute just read to you, to have divested the plaintiff of its title and rights, and to have become the true and legal owner of such premises.

V.

You are further instructed, that if the plaintiff, or the plaintiff's grantor, permitted the defendant to take possession of the tract of land in controversy, claiming all of it as his own, and to continue such possession openly, publicly, and adversely, under such
448 claim of title, for an uninterrupted period of ten years, or more, such possession will ripen into a right and title in the defendant, and forever afterwards prevent the plaintiff from taking possession of such property; but, in order to have this effect, the commencement of the defendant's possession must have been adverse to the plaintiff's rights, or to the rights of those under whom the plaintiff claims, and must be continued openly, and publicly, for the full period of ten years, or more, under a claim of ownership during such time.

VI.

You are further instructed, that, in order to enable the defendant to maintain his defence to this action, under the limitation law, just read to you, it is not necessary that the defendant should have a deed, or other written evidence of title, at, before, or after such entry; but, if it appears by a preponderance of the evidence that the defendant, under claim of title or ownership, took actual possession of the whole of the tract of land in controversy, and has held actual, notorious, and exclusive possession thereof for a period of ten years, or more, prior to the commencement of this suit, claiming the title thereto, then the plaintiff is not entitled to recover in this action.

VII.

Gentlemen, it is generally difficult to define with legal accuracy what acts or conduct on the part of an adverse claimant are sufficient to establish him in the possession of the disputed premises. He must at least physically enter upon the land that he claims and actually hold the same, and must fix in some intelligible way the extent, limits and boundaries of the tract that he takes and intends to occupy adverse to the rights of the true owner. But what or how extensive shall be his improvements, or to what use or uses he shall devote the land, to establish such possession as the law
449 requires, depend largely upon the situation, quantity and quality of the land claimed, its relation to adjoining lands, its peculiar formation upon the earth's surface, and its adaptability to the uses and purposes to which the claimant has devoted it. It is not even essential that such land so claimed should be actually enclosed with fences, or that claimant should erect a house or houses thereon, or that it should be put under actual cultivation. If the claimant so occupies it, uses the land for such purpose or purposes, exercises such dominion and acts of administration over it as are sufficient to notify his immediate neighbors or adjoining owners that such claimant is in the actual possession, and has the exclusive control of the land whose limits, boundaries, size and extent are fixed and defined with ordinary certainty, such acts are sufficient to bring the claimant within the protection of the statute, and to constitute legal possession.

VIII.

Has the defendant in this case established by a preponderance of the evidence that he has taken and held possession of the whole of the tract of land in controversy, adversely, notoriously and continuously, for the full period of ten years, or more, before the commencement of this suit, as explained to you in these instructions? If he has, the plaintiff's paper title must yield to defendant's superior claim, and your verdict should be, not guilty. If he has not, then plaintiff's paper title must prevail, and your verdict should be, guilty, as to such portion of the land in controversy not admitted by plaintiff to belong to the defendant.

IX.

You are instructed, that defendant is not entitled to a verdict of not guilty, unless he has established his defense of adverse possession, in accordance with the instructions heretofore given you, by a preponderance of the evidence. Such preponderance is not
450 alone determined by the number of witnesses testifying to a particular fact or state of facts. In determining whether the defendant has the preponderance of the evidence in favor of his contention, you should carefully consider the value of the testimony offered in support of his defense; the opportunities of the witnesses on both sides for seeing and knowing the things about which they

testified; their conduct and demeanor whilst testifying; their interest or lack of interest, if any be proved or be apparent, in the result of the suit; the probability or improbability of the truth of their several statements, in view of all other evidence, facts and circumstances proved upon the trial; and from all these circumstances determine upon which side is the weight or preponderance of the evidence; and if you determine that the same is not on the side of the defendant, that he has not established his defense as required by law, and your verdict should be guilty, except as to such portion of the tract of land described in defendant's amended plea as plaintiff in its amended replication admits that the defendant owns.

X.

Gentlemen, you have heard the testimony of the witnesses touching the kind, quality and adaptability of the tract of land in dispute, and you are the sole judges of the value and weight of that testimony; and if by such testimony you are satisfied by a preponderance of the evidence that the defendant settled on the land in controversy, with his family, ten or more years before the commencement of this suit, and appropriated said tract in its entirety to such uses as it is naturally fitted for, and that he used and occupied said tract in such a manner as to notify the general public that he claimed and asserted dominion over all of it, such acts and conduct on the part of the defendant would be sufficient to constitute possession of the whole of such tract.

451 XI.

If you find, by a preponderance of the evidence, that the defendant is entitled to the possession of the whole of the tract of land hereinbefore described, as claimed in his plea, according to the law given you in this case, you need go no further, but return a general verdict of not guilty.

XII.

But, if you do not so find, then you are instructed, that the plaintiff admits that the defendant is the owner, and entitled to the possession of a portion of the tract of land hereinbefore and in said plea of the defendant mentioned and described as situated upon both sides of the Vermejo river, embraced within the following boundaries, to wit: Beginning at the dam, on said river, at the upper end of John B. Dawson's farm, thence to the right-hand point of rocks, about three-fourths of a mile east of said dam, on the north side of the Vermejo river; thence down said river, in a straight line, to the northeast end of the rock fence, at the lower end of John B. Dawson's farm; thence about northwesterly, following said rock fence, across said river, to the end of said fence, as now constructed; thence up said river, in a straight line, to the place of beginning at said dam; and, that it is your duty to find the defendant not guilty, as to this tract, hereinbefore described.

XIII.

But, if the defendant has established, by a preponderance of the evidence, according to the rules given you, that he is entitled to more than the tract of land last above described, and admitted to be his by the amended replication of the plaintiff, then, it is for you to determine, from all the evidence in the case, according to the rules before given you, of how much more the defendant has
452 shown himself to be the owner, to find in his favor to such amount, and to specify such quantity in your verdict, accordingly.

XIV.

If you find against the plaintiff, to the full extent of defendant's claim, your verdict will be, simply, not guilty; and such verdict will award to the defendant the whole of the tract of land claimed by him, as described in his amended plea.

XV.

If you find in favor of the defendant only to the extent of the tract of land admitted to be his, in plaintiff's amended replication your verdict will be: We, the jury, find the defendant, as to all the tract of land claimed in his plea, in excess and outside of the boundaries of the tract described in the plaintiff's amended replication, guilty; as to the remainder, not guilty.

XVI.

But, if you find that the defendant is entitled to more than is admitted to be his, according to the description thereof, given in said amended replication, but less than the amount described in the defendant's plea, the form of your verdict will be: We, the jury, find the defendant not guilty, as to a tract of land described as follows (giving the description of it), and we find him guilty, as to the remainder of the tract claimed by him, in his amended plea.

Gentlemen, the plaintiff and the defendant have both given me instructions to be given to you, as the law in this case, which I do.

Instructions Requested by the Plaintiff and Given to You by the Court.

Adverse possession has in it nothing of stealthiness, nor is it elastic or flexible; there must be publicity, continuity, and good faith; it must be absolute and exclusive to every part of the
453 land, in its assertion, leaving no room for doubt, by the person against whom it is asserted that his title is disputed, and it must leave no room for doubt that he, the person taking and keeping the adverse possession, so asserts title, or claim of right, to such land, hostile to the true owner.

If you believe, from the evidence, that the plaintiff or its grantors, were the owners of the lands in question, and that, while they, or some one of them, were the owners of the lands in question, the

defendant turned his cattle, or animals, loose on the same, and ranged and moved them from place to place on the same, but kept them in no one place for ten consecutive years, then defendant would have no defense to plaintiff's title, but you should find him guilty.

The jury are instructed that the patent, documents, deeds, and other papers, introduced in evidence by the plaintiff, are sufficient to vest the legal title to the whole of the tract, or grant, of land described in the declaration in the plaintiff, and to authorize plaintiff to recover possession of the same, except as to such portion thereof as is admitted by plaintiff to belong to defendant, under his deed, unless defendant has shown an actual adverse possession of some portion outside of the tract thus admitted, for a period of ten years, or more, before the commencement of this suit. Such legal title is sufficient to establish, also, a lawful possession of every part of the land in controversy, not actually occupied by the defendant in the manner elsewhere explained. That is to say, the legal title draws with it the possession to such an extent that, if the true owner has possession of any part of the land, an adverse claimant must be confined to what he actually occupies, and his possession cannot be extended by construction to any other part of the tract. Wherever there is a conflict of possessions under different claims of right, the possession of all parts of the land not actually occupied adversely, as elsewhere explained, follows the legal title,
454 and, in such case, the oldest title, or the better right, will prevail.

To constitute such a possession as will bar the title the owner under the statute of limitations, it must be hostile, visible, notorious, continuous, and exclusive, for a period of at least ten consecutive years before the commencement of the suit. What acts will constitute actual possession, sufficient in law to bar the title of the owner, depends largely upon the circumstances of the case, and the nature and character of the property; and it is a question for the jury to determine from the evidence.

There must be an actual occupancy of some kind, either by cultivation, improvement, enclosure, or some other act by which the land is appropriated to the exclusive use of the person claiming it; and such use and occupation must be open, notorious, and continuous for at least ten years before the commencement of the suit; and it must be inconsistent with the use of the same land by the owner or other persons for the same purposes.

"The adverse possession before mentioned must not only continue, but it must continue the same in point of locality, during the prescribed period of time, sufficient to constitute it a bar; that is to say, a roving possession from one part of a tract of land to another cannot bar the right of entry of the owner upon any part of the land which had not been held adversely for ten years, although the different periods of possession of the separate parcels should amount in the whole to that number of years. For it is a clear principle of law that the right acquired by the adverse possession of a desseisor, or of one who enters or retains possession by

wrong, can never extend beyond the limits of the particular spot to which his occupation is confined. He cannot resort to the metes and bounds of the tract upon which he has settled, because the legal possession of the owner continues unaffected by the
455 tortuous entry, except so far as the actual adverse possession has disturbed it. The legal owner is constructively in possession of the whole tract, because his title extends to the whole—a wrong-doer can claim nothing in relation to his possession by construction."

You are instructed, that merely turning cattle loose upon unenclosed land to pasture does not prove that the party went upon the the land to claim the title, nor does it establish title by adverse possession. It is of the essence of adverse possession that it must be exclusive of all others. If it is interrupted by other adverse occupants, who occupy the land independently at the same time, the possession of the true owner is restored in law. If cattle of the adverse claimant are intermingled with those of others not holding under him, then there can be no title by possession against the true owner. If such occupants, between whom there is no privity, at the same time or successively occupy the land in question, this does not constitute such adverse possession as the law requires to bar the owner; but the rightful possession of the legal owner is deemed in law to continue against all of them.

If the jury find from the evidence that the defendant entered into possession of certain lands suitable for cultivation, in the valley of the Vermejo river, under a purchase thereof from Lucien B. Maxwell, the then owner of the lands in question, and that such purchase was evidenced by a deed executed by said Maxwell, and delivered to and accepted by the defendant, and that the defendant, after such purchase, from time to time grazed small herds of cattle, hogs, or horses, in some of the cañons outside of the lands described in his deed, and that such herds of animals did not continuously occupy any particular piece or tract of ground, but roved about at will, or were moved by herders from place to place and
456 from time to time, then such herding or grazing of animals would not be sufficient in law to constitute an adverse possession of the land outside of that described in defendant's deed.

If you believe, from the evidence, that the property in question is so situated as not to admit of any permanent or useful improvement, the defendant must be found guilty, unless he has shown to you, by a preponderance of the evidence that he has continuously claimed the property for ten consecutive years before the commencement of this suit; and, that such claim has been evidenced by public acts of ownership, such as he would exercise over property which he claimed in his own right, and such as he would not exercise over property which he did not claim as his own.

If you believe, from the evidence, that the occupation of the land in question, outside of the lands cultivated and built upon, by defendant, has been by running and grazing cattle and live stock thereon, and that said live stock did not occupy, at all times, for any ten consecutive years prior to the commencement of this suit,

the whole of said land, but were, from time to time, changed from place to place, or confined or restrained, sometimes at one place and sometimes at another, and that defendant simply used said land as a live-stock range, as other people, in the same vicinity, did with other lands, in the same vicinity, at the same time; and, that, in driving other people's cattle off the same and driving his own back onto the same, he only did as his neighbors and others did, in that locality, as to other lands claimed by them as a live-stock range, you must find the defendant guilty.

If you find, from the evidence, that the defendant claimed the land purchased by him, under a deed, and put said deed upon record, such record became notice to the world, and to the plaintiff as well, of the defendant's claim; and, if, thereafter, the defendant occupied land outside of the boundaries described in the deed, in such a way as to conceal from the plaintiff and its grantors
457 the fact that he was claiming land outside of his deed, then such occupation would not constitute adverse possession, and in such case you must find the defendant guilty.

The defendant requests the following to be given to you as the law in this case, which is accordingly done:

You are instructed, that the patents, documents, deeds, and other papers, introduced in evidence by the plaintiff, are sufficient to vest the legal title to the whole of the land in controversy in plaintiff, and to entitle plaintiff to the possession of the whole of said lands, unless you find, from the evidence, that defendant has a legal right to the possession thereof, or of some part thereof, either by virtue of a deed of conveyance from Lucien B. Maxwell and wife, or by adverse possession for a period of ten years or more, prior to the commencement of this suit, or, unless you find, from the evidence, that plaintiff has failed to prove that the land in controversy, or some portion thereof, is not the whole, or part of the 15,000 acres of land excepted in the conveyance from Frank R. Sherwin and others to the Maxwell Land Grant Company, under which plaintiff claims title to said land.

You are instructed, that the burden of proof is on the plaintiff to show that it has the legal title to, and the right of, possession of all the lands in controversy, and, unless you find, from the evidence, that the lands in controversy were included in and not excepted from the deeds of conveyance under which plaintiff claims title, plaintiff cannot recover in this action.

You are, also, instructed that if you find from a preponderance of the evidence, that the defendant, Dawson, took adverse possession in the year 1868, of the whole, or part, of the lands described in his plea, and continued such adverse possession without interruption for a period of ten years, or more, such adverse possession so continued for the said p-riod of ten years would operate
458 to extinguish the title under which plaintiff claims, and to vest in said John B. Dawson the legal title to the lands so, as aforesaid, occupied by him for said period of ten years, and, in that event, it is immaterial in this case whether defendant held exclusive adverse possession of the land described in his plea, or not,

after such period of ten years had elapsed, and you should find the defendant not guilty, as to the land so occupied by him.

The jury are instructed, that one of the essential elements of adverse possession of land is that such possession should be exclusive, but the mere pasturing of stock upon the land of which defendant claimed adverse possession, by persons who came upon the land with their stock, temporarily, without setting up for themselves any adverse claim to such lands, and who came upon such lands with their stock with the permission of defendant, would not make the possession of defendant the less exclusive, or the less adverse.

The jury are instructed, that if you find from a preponderance of the evidence that the defendant, Dawson, took adverse possession of the whole, or any part, of the land in controversy, in the year 1868, and continued such adverse possession and occupan-y, without interruption for ten years, or more, such possession so continued for the period of ten years would vest the legal title in defendant, Dawson, to the land so, as aforesaid, adversely held and occupied for such period of ten years; and the acts of other parties in ranging stock on said lands since the year 1878, would, in that case, be mere acts of trespass, which could not affect defendant's right and title to said lands.

You are further instructed, that, in the year 1868, Lucien B. Maxwell was the legal owner of all the land in controversy in this suit, and had a legal right to dispose of the same in any manner; and if you find from a preponderance of the evidence that Lucien
459 B. Maxwell at any time during said year consented that defendant Dawson should occupy, under claim of title or right, the land described in his plea, and designated the boundaries of such land; and if you further find from a preponderance of the evidence that said Dawson did so occupy said land, then you are instructed that such possession of the defendant Dawson from such time would be lawful and also adverse; and if the defendant Dawson continued in such possession for a period of ten years from such time, and no demand was made upon said Dawson by said Maxwell, or any person claiming title under him, for the surrender of such possession, you will find the defendant not guilty.

You are further instructed, that every one in purchasing real estate is bound to take notice as to who holds possession of the land being purchased. And if you find from the evidence that the defendant, John B. Dawson, at the time of the purchase of the land described in the declaration by the plaintiff in this case, was then residing upon a portion of said land, the plaintiff was bound to take notice of the right or claim by which the said John B. Dawson so occupied the said tract of land, or any part of the same; and that such occupation by the defendant would in law be constructive notice to the said plaintiff of any claim to said land by the defendant which could have been ascertained upon due inquiry, and whether the plaintiff made such inquiry or not, cannot affect the rights of the defendant.

You are further instructed, that possession of land, in order to be adverse, must be open and notorious; but if you find from a pre-

ponderance of the testimony that the legal owner of the land in question had actual knowledge of the possession by the defendant Dawson, then it is not so important whether the possession of the defendant Dawson was open and notorious or not, as the ob-
460 ject of the possession being open and notorious is for the purpose of conveying information of the possession to such owner.

And you are further instructed, that if you find from a preponderance of the evidence that W. R. Morley went upon the land in question in this suit as the agent and representative of the Maxwell Land Grant and Railway Company, for the purpose of ascertaining the extent of the land claimed by the defendant Dawson, and you also find that the defendant Dawson told said W. R. Morley that he claimed the land described in his pleas, then such notice to W. R. Morley would be actual notice to the company which he represented; and if the defendant Dawson thereafter continued in the uninterrupted possession of said land for a period of ten years subsequent to his first taking adverse possession of said land you will find the defendant not guilty.

You are also instructed, that the deed from Lucien B. Maxwell and wife to John B. Dawson, which is in evidence in this case, although defendant does not rely exclusively upon it for his defense, is nevertheless a good and valid conveyance for the land described therein; and you are further instructed, that where the language of a deed is doubtful and capable of two different reasonable constructions or meanings, that construction or meaning which is most liberal toward the grantee is the one that should be adopted.

Gentlemen of the jury, you will take the pleadings with you. By agreement of counsel of both sides, you are entitled to the services of the court interpreter for the purpose of translating the pleadings into Spanish, and translating from Spanish into English any verdict that you may render in the case. Remember, that the interpreter goes as your servant, to wait upon you, not to give you any instructions as to what your verdict should be; not to discuss the testimony with you; not to participate in your deliberations in any way; only for the purpose of translating from one language
461 into the other anything that you may need for your information. The interpreter is well known to you, and will not attempt to invade your exclusive province. When you have agreed upon a verdict, the foreman that you appoint will sign it in your behalf. You may then seal it, give it to your foreman, and return with it, sealed, into court to-morrow morning at nine o'clock.

Mr. SPRINGER: I desire to note an exception to some of the instructions that were given at the instance of the defendant. I believe, under the rule, we may specify the exceptions we have, later.

The COURT: Yes sir. The same privilege may be extended to counsel on both sides.

Mr. JONES: I except to each and every instruction asked for by the plaintiff and given by the court.

Mr. JONES: We further except to the instruction given by the

court, that says the documents, patents, etc., are sufficient to entitle the plaintiff to recover in this case, for the reason that it makes no reference to the fifteen thousand acres of land excepted from the deeds.

Mr. SPRINGER: We except to instructions numbered 4, 5, 6 and 7, given by the court, on its own motion; and to instructions Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9, given by the court, at the request of the defendant.

Which contains all the evidence introduced or offered by either party, upon the trial of said cause, together with the objections made to certain parts thereof, the rulings of the court thereon, and the exceptions taken at the time, and also the instructions given by the court, and the exceptions taken thereto at the time.

462 And, because the foregoing matters are not all of record in said cause, the said plaintiff prays that this, its bill of exceptions, containing the same, may be signed, sealed, and made part of the record therein, which is accordingly done, this 6th day of August, A. D. 1892.

JAMES O'BRIEN,
Chief Justice, etc.

It is hereby agreed that the foregoing proposed record and bill of exceptions may be settled, signed and sealed by the judge of said court, as the record on which the judgment in said cause may be reviewed by the supreme court, without further notice and time for proposing amendments thereto, or for settling said record and proposed exceptions, is waived. It is further agreed that the deeds offered in evidence, on the part of the plaintiffs, need not be inserted in the bill of exceptions, but it is admitted, for the purposes of the hearing of this cause in the supreme court, that the contents of said deeds were as set forth by counsel at the time of their offer.

FRANK SPRINGER,
Attorney for Plaintiff.
A. A. JONES,
Attorney for Defendant.

Dated August 6th, 1892.

Upon the foregoing stipulation, the foregoing record and bill of exceptions are settled, signed and sealed, as those upon which the said cause may be heard in the supreme court.

JAMES O'BRIEN,
Chief Justice, etc.

August 6th, 1892.

463 TERRITORY OF NEW MEXICO,)
County of San Miguel.)

I, Miguel A. Otero, clerk of the fourth judicial district court, for the Territory of New Mexico, sitting in and for the county of San Miguel, do hereby certify that the above and foregoing contains a true and perfect transcript of the record, and proceedings, papers,

and bill of exceptions, as signed by the judge of said court, in the case lately pending in said court, wherein The Maxwell Land Grant Company was plaintiff, and John B. *Das* defendant, as the same remain of record, and on file in my office.

Witness my hand and the seal of said court, this 6th day of August, A. D. 1892.

[SEAL.] M. A. OTERO, *Clerk*.

464 & 465 And afterwards, to wit, on the 2nd day of January, 1893, there was filed in the office of the clerk of said supreme court an assignment of errors in said cause; which said assignment was and is in the words and figures following, to wit:

In the Supreme Court of the Territory of New Mexico, at the August Term, 1892.

THE MAXWELL LAND GRANT COMPANY, Plaintiff in Error, *vs.* JOHN B. DAWSON, Defendant in Error.	Error to the District Court, San Miguel County.

Assignment of Errors.

Now comes The Maxwell Land Grant Company, plaintiff in error, by its attorneys, and says, that in the record and proceedings of the district court for the fourth judicial district in and for the county of San Miguel, in the above-entitled cause, there is manifest error, in this, to wit:

1. In denying the plaintiff's motion for a new trial.
2. In excluding the deeds of Lucien B. Maxwell and wife, to Miller, Maulding and Curtis, for lands on the Vermejo, offered in evidence by plaintiff.
3. In giving to the jury instructions Nos. 1 and 2, requested by defendant (folios 1826, 1827).
4. In admitting the testimony of J. B. Dawson as to oral statements of Maulding and Curtis, touching their purchase (folio 1203), and of other parties touching Dawson's ownership of the land in question (folios 271, 294, 303–'4, 372).
5. In giving instructions Nos. 3, 4, 5, 6, 7 and 8, requested by defendant (folios 1828, 1836).
6. In admitting the testimony of witnesses against plaintiff's objection; all shown by the bill of exceptions.
7. In excluding the testimony offered by plaintiff and ruled out by the court, as shown by the bill of exceptions.

Wherefore, for the above, and many other manifest errors in the said record, appearing on the face thereof, plaintiff prays that the judgment of the district court in said cause be reversed and held for naught.

THOMAS B. CATRON,
FRANK SPRINGER,
Counsel for Plaintiff in Error.

466 And afterwards, to wit, at a regular term of the supreme court of the Territory of New Mexico, begun and held at Santa Fé, New Mexico, on the last Monday of July, in the year one thousand eight hundred and eighty-three, the same being Monday, July 31, 1893; on the third day of said term, the same being Wednesday, August 2, 1893, the following, among other, proceedings were had, to wit:

MAXWELL LAND GRANT COMPANY, Pl'ff in Error, *vs.* JOHN B. DAWSON, Def't in Error.	520. Error to District Court of San Miguel County.

This cause, coming on for hearing upon the transcript of record, assignment of errors, and briefs of counsel on file, is argued by Frank Springer, Esq., for plaintiff in error, and A. A. Jones, Esq., for defendant in error, and submitted to the court, and the court, not being sufficiently advised in the premises, takes the same under advisement.

And afterwards, at the regular term of said supreme court last aforesaid, on the thirteenth day thereof, the same being Tuesday, August 15, 1893, the following, among other, proceedings were had, to wit:

MAXWELL LAND GRANT COMPANY, Pl'ff in Error, *vs.* JOHN B. DAWSON, Def't in Error.	520. Error to District Court of San Miguel County.

This cause having been argued by counsel and submitted to and taken under advisement by the court upon a former day of the present term, the court, being now sufficiently advised in the premises, announces its decision by Associate Justice Lee, affirming the judgment of the court below, Associate Justices Fall and Seeds concurring, for reasons stated in the opinion of the court on file, Associate Justice Freeman dissenting. It is therefore considered and adjudged by the court that the judgment of the district court
467 in and for the county of San Miguel, whence this cause came into this court, be, and the same hereby is, affirmed, and that in accordance therewith the said defendant in error, John B. Dawson, go hence without day and recover of the said plaintiff in error his costs in this behalf expended, as well in the court below as in this court, to be taxed, and that he have execution therefor.

And afterwards, to wit, on September 9, 1893, there was filed in the office of the clerk of said supreme court a præcipe for a writ of error in said cause; which said præcipe was and is in the words and figures following, to wit:

In the Supreme Court of the United States.

To the clerk of the supreme court of the Territory of New Mexico:

You will please issue a writ of error to the supreme court of the Territory of New Mexico to bring into the Supreme Court of the United States for review the record and proceedings in a cause lately pending in said supreme court of the Territory of New Mexico, wherein The Maxwell Land Grant Company was plaintiff and John B. Dawson was defendant in error, and wherein judgment was by the said supreme court of the Territory of New Mexico rendered on the fifteenth day of August, A. D. 1893, affirming the judgment of the district court for the fourth judicial district of said Territory sitting within and for the county of San Miguel.

FRANK SPRINGER,
Attorney for said Plaintiff in Error.

468 And heretofore, to wit, on the 15th day of August, 1893, there was filed in the office of the clerk of said court two opinions of the judges of said court in said cause, copies of which are hereto annexed in accordance with the amendment to rule 8th of the Supreme Court of the United States, to be herewith transmitted; which said opinions are in the words and figures following, to wit:

469 LEE, *J.*:

This is an action of ejectment brought to recover possession of certain lands within the Beaubien and Miranda, or Maxwell, land grant. The plaintiff declares for the lands described in a United States patent to Beaubien and Miranda, covering 1,714,000 acres. Defendant disclaims as to all the land thus described, except a certain tract described in his first additional plea, as to which he pleads not guilty, and in his third and fourth pleas makes defense as to this tract under the statute of limitations. Plaintiff, by its replication to these pleas, joins issue, except as to a certain part of the land claimed by defendant, which part it admits to be the property of the defendant. The real controversy, therefore, is as to the ownership of the land lying outside of the boundaries of a tract admitted to belong to defendant, and within the boundaries of a larger tract claimed by defendant. That is to say, defendant's ownership of a certain tract is admitted. He claims, not only this, but a larger one surrounding it, which is disputed. The contention is over the land embraced in the excess. The plaintiff introduced in evidence the patent of the United States for its grant, and deeds showing a chain of title from Lucien B. Maxwell, who, it is admitted, was the former owner of the grant, down to the plaintiff, the Maxwell Land-Grant Company, which deeds all contain the following reservation: "Excepting and reserving from said grant and estate such lands, not exceeding, in the aggregate, fifteen thousand acres, as had been conveyed by the said Lucien B. Maxwell prior to the 26th day of May, 1869." This chain of title from the

original grantees named in the patent down to the plaintiff in this suit, with proof of heirship of some of the grantees, was all the evidence offered on the part of the plaintiff in support of its title to the lands in question; and with this, and some oral testimony tending to show that the land claimed by Dawson was a part of the land embraced in the patent of the Beaubien and Miranda grant, it rested its case. The defendant then asked the court to instruct the jury to return a verdict in his favor, on the ground that the plaintiff had failed to show that the land claimed by the defendant was not a part of the 15,000 acres exempted from the deeds in its chain of title as lands having been conveyed by Lucien B. Maxwell prior to May 26, 1869. This motion was overruled, but in the instructions given to the jury the court submitted the proposition as a question of fact. These instructions were as follows: "You are instructed that the patents, documents, deeds, and other papers introduced in evidence by the plaintiff are sufficient to vest the legal title to the whole of the land in controversy in the plaintiff, and to entitle the plaintiff to the possession of the whole of said land, unless you find from the evidence that the defendant has a legal right to the possession thereof, or some part thereof, either by virtue of the deed of conveyance from Lucien B. Maxwell and wife, or by adverse possession for a period of ten years or more prior to the commencement of this suit, or unless you find from the evidence that the plaintiff has failed to prove that the land in controversy, or some
470 portion thereof, is not the whole or a part of the fifteen thousand acres of land excepted in the conveyance from Frank R. Sherwin and others to the Maxwell Land Grant Company, under which plaintiff claims title to said land." "You are instructed that the burden of proof is on the plaintiff to show that it has the legal title to, and the right of impression of, all the lands in controversy; and unless you find from the evidence that the lands in controversy were included in, and not excepted from, the deeds of conveyance under which plaintiff claims title, plaintiff cannot recover in this action." The plaintiff excepted to these instructions, and assigns the giving them as error.

It is elementary that in actions of ejectment the plaintiff must recover on the strength of his own title, and show that he had title to the particular land in dispute. An exception to a grant withdraws from the operation of the conveyance some part or parcel of the thing granted, which, but for the exception, would have passed to the grantee under the general description. The part excepted is already in existence, and remains in the grantor. It is clear that the 15,000 acres thus excepted did not pass to the grantee, and there was no evidence offered to show what particular part of the whole grant the reserved part comprised. There is no presumption of law that the land claimed by the defendant was not a part of the land reserved in the plaintiff's deeds constituting its claim of title. It was therefore a part of the plaintiff's case, and the burden was on it, to show that the land claimed by the defendant was not a part of the 15,000 acres which had been conveyed by the said Lucien B. Maxwell prior to the 26th day of May, 1869. There-

fore, if the plaintiff failed to establish by competent evidence that the land in controversy was not a part of the 15,000 acres reserved by the deed from Maxwell, there was certainly no error in the instructions complained of.

It is contended, however, on the part of the plaintiff, that the court erred in excluding deeds of Lucien B. Maxwell and wife to Miller, Maulding, and Curtis for lands on the Vermejo, which were offered in evidence by the plaintiff, which it is claimed would have had a tendency to show what lands had been conveyed by Maxwell on the Vermejo prior to May 26, 1869. If these deeds had been offered in evidence by the plaintiff as a part of its case in chief for that purpose, it would have been clearly error on the part of the court to have excluded them; but they were offered in rebuttal, and for a different purpose. The evidence must be proper for the specific purpose for which it is offered. The court has a right to know what it is designed to prove, in order to determine its relevancy and materiality. "Where, therefore, evidence is rejected which is tendered for one purpose, and it is inadmissible for that purpose, but is admissible in another view of the case, not alluded to on the trial, the court will not grant a new trial as for an improper rejection of evidence." Grah. & W. New Trials, p. 669. But, even if this could be construed as error on the part of the court, is it not overcome by an admission which appears in the record of the case, as follows? "It is admitted and agreed by counsel that the deeds from Lucien B. Maxwell and wife to Maulding, Miller, and Curtis, of which counsel in error offered to introduce certified copies in evidence at the trial in the court below, were duly executed, acknowledged, and recorded; that said deeds were both dated January 7, 1869, and purported to convey certain lands lying on both sides of the Vermejo river below the lands in controversy; and that the lands so conveyed are described in said deeds as all the land or ground suitable for farming or tillable or cultivating purposes in the valley or drainage of the Vermejo river, with certain boundaries, which boundaries are described by reference to natural objects, such as rocks and trees; and that no area or acreage is mentioned therein, nor is there anything in the deeds themselves whereby, without other evidence, the amount of the land thereby conveyed could be determined." The plaintiff, by virtue of this admission, so far as the determination of the amount of the land conveyed is concerned, has the same benefit as if the deeds had been introduced in evidence, and thereby overcomes the effect of the error, if such action was error.

It is assigned by the plaintiff as error that the court erred in admitting the testimony of J. B. Dawson as to oral statements of Maulding and Curtis touching their purchase from Maxwell. The defendant introduced evidence which tended to show that in the year 1868 he entered upon the land in controversy under an agreement of purchase with one Joel Curtis, Taylor Maulding, and Dick Miller, who were at that time in possession of the land under a contract of purchase with Lucien B. Maxwell and wife, the then owners of the Beaubien and Miranda grant. The tract purchased by Miller,

Maulding, and Curtis, and of which they were in possession, extended for six miles along the valley of the Vermejo river, including its drainage. Dawson's contract with them was for the upper portion of this tract, it being the land in controversy in this case, agreeing to pay therefor $3,700. That he took possession under the agreement, and, on the line fixed by them as his lower boundary, he erected a stone fence across the valley. That he has been in possession and actual occupation of the land, under a claim of ownership, since his entry, in 1868, up to the present time. The plaintiff, on rebuttal, introduced a deed from Lucien B. Maxwell and wife to the defendant, executed on the 7th day of January, 1869, which it is admitted conveys to the defendant at least a portion of the land in contro-
471 versy. This deed described the land conveyed as follows: * * * "All the land or ground now suitable for farming or cultivating purposes in the valley or drainage of the Vermejo river, county of Mora, Territory of New Mexico, within the following boundaries, to wit: Beginning at a certain dam at the head of a certain ditch at the right-hand point of rocks; from thence running down on the north side of said river to a certain other pile of rocks, on a knoll or elevation, with some bushes near thereto; thence running very near southward across said river to a piñon tree to the right of a ridge near a wash, which tree is marked with the letter 'L;' thence running up said river on the south side to the place of beginning; containing about —— acres, more or less." * * * It is as to the ambiguity of the words of this deed, used in describing the land therein conveyed, that the principal contention in the case arises. It is shown by the evidence that the dam referred to in the description was one that had been put in by Dawson on the upper part of his land for the purpose of irrigation. The tree marked "L" was to indicate the line between Curtis, Miller, Maulding, and Dawson. This deed from Maxwell and wife to Dawson, together with the admission as to the deeds of Maxwell and wife to Miller, Maulding, and Curtis, was the only evidence introduced on the part of the plaintiff to dispute the testimony of Dawson that he had purchased from Miller, Maulding, and Curtis under their contract with Maxwell for the whole tract on the Vermejo river, and not from Maxwell himself, and that the deed made by Maxwell and wife to him was executed for the purpose of carrying out their contract with Miller, Maulding, and Curtis. The question as to whether Dawson purchased from Miller, Maulding, and Curtis under their contract with Maxwell, or whether the purchase was made by him from Maxwell and wife, becomes material, from the fact that a portion of the drainage of the Vermejo river claimed by Dawson empties into the river below the line of the land in controversy, but within the lines of the land purchased by Miller, Maulding, and Curtis from Maxwell; and whether their statements in this connection, as testified to by Dawson, were or were not properly admitted in evidence, becomes immaterial, from the fact that defendant Dawson further testified that he had conversations with Maxwell, the party from whom they claimed to have purchased, and that Maxwell pointed out the land, and also told

him what amount of land he would receive under his agreement with Maulding, Miller, and Curtis, who were then in possession, and so recognized by Maxwell under his sale to them. That was all that was required to give legal effect to a contract at that time. The civil law, as it existed at the time of the acquisition of the territory, was then in full force; and, the statute of frauds being unknown to the civil law, a verbal contract for real estate, where possession was delivered, could have been enforced.

Dawson testified that he did not pay the money for the purchase to Maxwell, but paid the $3,700 to Curtis, one of the parties with whom he contracted, and that Curtis paid the money to Maxwell under the Miller, Maulding, and Curtis contract, and that Maxwell and wife sent him (Dawson) the deed introduced by the plaintiff. The defendant contends that this deed was executed by Maxwell in compliance with his contract with Miller, Maulding, and Curtis, and that his and their deeds from Maxwell cover all the lands embraced in the contract between Maxwell and Miller, Maulding and Curtis, for the six miles of land along the Vermejo river, including its drainage. This contention is strongly supported by the fact that all of the deeds were executed at the same time, and the same language used in the description of the property conveyed, as being "all the land or ground now suitable for farming or tillable or cultivating purposes in the valley or drainage of the Vermejo river," etc. In construing the language in these deeds so as to ascertain the intention of the parties, we must consider the law applicable to water rights along streams in force at the time of their execution. The common-law right of riparian ownership was not in force in this Territory. The occupant of land in each valley or water-shed capable of irrigation from a stream flowing through it had, under the law, a vested interest in the common use of the water for irrigation and like purposes to which the waters were dedicated. The word "drainage" is defined to mean that district of country that drains into a river or stream, as the drainage of the valley of the River Thames, and has the same legal significance as the term "water-shed," and it appears that the parties so understood the word "drainage" at the time they contracted. Dawson spoke to Maxwell in regard to where the drainage would place the line around the tract of land that he was to get, and therefore he must be understood to have known that Dawson was claiming such a line as the drainage would give him, and if such were the case that understanding or agreement would fix the boundary line of the deed, and it would be immaterial where a survey would establish the line. It would be perfectly proper for parties owning adjoining tracts of land to settle by agreement where the division line should be, and the deeds which are ambiguous and uncertain will be construed in accordance with the intention of the parties.

We have considered the real matter in contention in this case, as we understand it. The case was fully and comprehensively
472 presented to the jury by the court in its instructions, covering every theory upon which it could be decided under the issues. The verdict returned was a general verdict for the defendant,

There were no special findings asked, and there is nothing in the record to indicate upon what particular grounds the jury based their verdict. Taking into consideration the issues, the evidence, and the instructions of the court, we think the jury were warranted in returning the verdict they did; and, not finding any error in the rulings of the court which we think would justify a reversal of the case, the judgment below will be affirmed, and it is accordingly so ordered.

Seeds and Fall, JJ., concur.

FREEMAN, *J.* (dissenting):

I find myself unable to agree to the conclusions reached by a majority of the court. I am free to confess that in my opinion the ends of substantial justice have probably been reached. I think it more than probable that, as a matter of equity and good conscience, the defendant in error is entitled to retain possession of the land which he claims. It is a question of the right of a private citizen to retain the use and occupation of 20,000 acres of land carved out of a grant of 2,700,000 acres. But the conclusions of law reached by a majority of the court are calculated, in my opinion, to disturb landmarks of title, and menace, to a dangerous extent, the well-established rules governing title to real estate. The defendant went into possession of the premises under a contract of sale from the plaintiff's grantor. He accepted a deed, and up to the bringing of the suit claimed to hold under that deed. The first disclaimer which this record shows to have been made (and therefore the first declaration of adverse ownership outside of the boundaries as contained in his deed) is set up in his defense to this suit. The description of the land, as contained in the deed, is as follows: "All the land or ground now suitable for farming or cultivating purposes in the valley or drainage of the Vermejo river, county of Mora, Territory of New Mexico, within the following boundaries, to wit: Beginning at a certain dam at the head of a certain ditch at the right-hand point of rocks; from thence running down on the north side of said river to a certain other pile of rocks on a knoll or elevation with some bushes near thereto; thence running very near southward across said river to a piñon tree to the right of a ridge near a wash, which tree is marked with a letter 'L;' thence running up said river on the south side to the place of beginning"—while the land claimed by him now in his plea is described as follows: "Commencing at the dam on said river, at the upper end of John B. Dawson's farm; thence running to a high point of rocks on the north side of the Vermejo cañon; thence following along the top of the divide west of Rail cañon to the head of Saltpeter cañon, to a point on a line with said John B. Dawson's rock fence; thence following said rock fence across the Vermejo to the top of the divide between the Vermejo and Van Bremmer cañon; thence following the top of said divide to the head of Coal cañon; and thence along the top of the divide east of Coal cañon to a point on said divide nearest the place of beginning; thence to the place of beginning." While the bound-

aries set out in the deed are vague and uncertain, it is not pretended that they include all, or nearly all, the land included in the boundaries set out in the plea. The deed embraces about 1,000 acres, while the plea claims 20,000. It is to be observed that the defendant now disclaims title under the deed, but relies wholly on adverse possession under the statute of limitation. The deed was introduced over his objection by the plaintiff. The defendant is allowed to state that plaintiff's grantor, Maxwell, pointed out to him (the defendant) the boundaries, and that they were the same as are now set out in the plea. "The boundaries are what you read in that description there," is the language of the witness. And yet he admits that when the plaintiff's agent came to see him about his boundaries he exhibited to him the deed he received from Maxwell, and in another part of his testimony he admits that he frequently claimed that under the deed from Maxwell he was entitled to the "drainage of the Vermejo between the dam and the stone fence." It seems perfectly clear to me that when the defendant bought the land, and went into possession, the tract conceded to him by the plaintiff in this suit was all that he understood he was buying. At the same time he understood that the possession of the land on each side of the stream gave him command of the water, and that this command virtually gave him control of the grazing privileges over the surrounding country, particularly within what is known as the "drainage" of the river. This was known as his "range." It was a part of the unwritten law of this Territory at that time that ownership of the water commanded all that portion of the surrounding country contiguous thereto, and created an easement that was recognized by the legislature of this Territory in the passage of the act approved February 15, 1889, which made it a misdemeanor to overstock a range. Defendant says that he talked with Maxwell about the extent of his possession, and that Maxwell pointed out to him his boundaries; that this was in June, 1868, six months before he received his deed from Maxwell, which was dated January 7, 1869; and that they were at that time at the stage station on the Vermejo, about four miles distant from the premises. Now, bearing in mind that this was the only time and occasion upon which Maxwell, the grantor, ever undertook to define the boundaries of the premises—for he admits that Maxwell never came on the ground to point out
473 the boundaries,—it becomes evident that the boundaries which he undertakes to set up in his defense are purely imaginary, and have been prepared wholly to meet the exigencies of this litigation, for it must not be overlooked that in his examination-in-chief, wherein he undertakes to set out the circumstances under which he took possession, he says not a word about any deed from Maxwell, but claims to have purchased the land from Maulding and Curtis. He does not bring Maxwell on the scene all all, except to recognize his boundaries, and that was done at a distance of four miles from the land; and, when asked what boundaries were recognized by Maxwell, he replied, "The boundaries were what you read in that description there," meaning defendant's plea. The attitude of the defendant is singularly contradictory, in this: In the first place, as

I have shown, he attempts to ignore altogether any paper title from Maxwell, and relies solely on a naked possession of more than 10 years,—a possession acquired under a contract with Curtis and Maulding; but when confronted with a deed given him by Maxwell, which deed, it was shown, he had accepted as a muniment of his title, he attempts to show that under the vague description contained in this deed he could hold the entire tract covered by his plea. But there are two answers to this, one of which is persuasive, and the other conclusive. They are these: In the first place, the fact that he not only did not rely on his deed, but protested against its admission, affords a strong presumption that he did not regard it as covering the amount of land he claimed. If it did include the same land covered by his plea, it would conclude this whole controversy. The plaintiff admits that he is entitled to the land covered by this deed. But, in the second place, the deed negatives this idea. It purports to convey all the land now suitable for farming or cultivating purposes in the valley or drainage of the Vermejo river, county of Mora, Territory of New Mexico, "within the following boundaries." The same theory of construction that would, under this description, include the entire valley or drainage of the river, would include the entire county of Mora, and the Territory of New Mexico. The land conveyed is not the "valley" or the "drainage," but certain land within a given boundary; the tract thus bounded lying in the valley or drainage of the river, and in the county and Territory named. This deed, he admits, he received from Maxwell shortly after he went into possession. He did not at that or any subsequent time prior to the institution of this suit repudiate this deed. On the contrary, he allows his grantor to suppose that he was holding under this deed, and when his grantor's vendee, the plaintiff, called on him to inquire as to his boundaries, he exhibited this deed, and continuously claimed to hold the entire tract covered by his plea until the institution of this suit, when, on being advised, no doubt, that under his 20 years' possession of this "drainage" or "valley," or what the witnesses term his "range," he could hold 20,000 acres, instead of the 1,000 covered by his deed, he determined to repudiate the deed, and hold the larger tract under title derived by naked possession.

There is another singular feature connected with this defense. The defendant claims to have gone into possession in 1868, under contract with Curtis and Maulding, who claim to own a "block" lying on the river. Now, at that time the title was not only not in Maulding and Curtis, but it was not in Maxwell, for it was not until two years after that Maxwell bought the last outstanding interest in the grant, and it was not until May 19, 1879, 11 years after the defendant had gone into possession, that a patent from the Government, in favor of Beaubien and Miranda, issued. Now, granting that Maxwell could anticipate his title so far as to convey by deed an interest not yet acquired from the Government, it will not be pretended that a naked possession existing at the date of his patent can create title as against the patentee. At the date, therefore, of the issuance of the patent, the defendant was not, nor could

he be, invested with an adverse holding beyond the express terms of his deed from Maxwell. In order, therefore, to create an estate that will defeat the title of the patentee, he must show that for 10 years prior to the institution of this suit he was "holding or claiming by virtue of a deed or deeds of conveyance, devise, grant, or other assurance purporting to convey an estate in fee simple." (Comp. Laws, 1880.) The defendant insists, however, that under his deed he can set up an adverse title to a greater quantity of land than is embraced within its boundary, if he can show that he was in possession of said amount under a mistake as to his boundaries; citing Tyler, Ej. p. 905, as authority for this proposition. He cannot avail himself of this defense, however, for the reason that neither in his pleadings nor in his testimony does he rely on the deed, but, on the contrary, expressly repudiates it. If he had set up the deed as matter of defense, and had introduced proof tending to show that by reason of the ambiguity of its recitals he had a right to suppose that it conveyed the land in controversy, and that issue had been properly submitted to the jury, I am of the opinion that a verdict in his favor on such an issue would have concluded the whole controversy. But this deed, which was admitted over the objection of the defendant, was submitted to the jury under the tenth instruction asked for by the defendant, and in terms that were well calculated to mislead the jury, for they were told, at request of defendant, that the defendant did not rely exclusively on the deed. And this whole defense, which has been conducted with singular ability, is an ingenious application
474 of the doctrine, "heads, I win; tails, you lose," and the jury were authorized to recognize the deed if they could make it support the defendant's contention, or to discard it if it supported the plaintiff's case. It is an elementary doctrine that in ejectment the plaintiff must recover on the strength of his own, and not on the infirmity of the defendant's title, but the defendant cannot resist the plaintiff's demand by setting up two absolutely contradictory defenses; that is to say, he cannot at the same time hold under and adverse to the plaintiff; he cannot take possession under a deed conveying 100 acres, and thereafter create a title to 200 without showing a distinct adverse claim to 100 acres not embraced in his deed. The vender, having placed him in possession under a deed conveying 100 acres, has a right to presume that no more than that amount is claimed until some distinct act on his part discloses an intent to claim land not embraced in his deed. In other words, a vendee, while holding possession under a deed, is estopped to deny the title of the vendor. He cannot set up an outstanding title in himself. Baldwin *v.* Brown, 17 Johns., 66; Jackson *v.* Ayres, 14 Johns., 223. If he undertakes to hold under his deed, he must confine himself to the bounds. Sedg. & W. Tr. Title Land, p. 577; Hughes *v.* Israel, 73 Mo., 548; Fugate *v.* Pierce, 49 Mo., 441; Pope *v.* Hanmer, 74 N. Y., 244. So long as he is holding under his deed, good faith to his vendor requires that he shall be bound by its recitals. Crispen *v.* Hannavan, 50 Mo., 548; McRae *v.* Williams, 7 Jones (N. C.), 430; Crary *v.* Goodman, 22 N. Y.,

170. In this case the record fails to disclose any act upon the part of the defendant in error indicating an intention to hold adversely to his grantor any lands outside of the boundaries of his deed, prior to the filing of his plea in this case. Much was said in the argument about the use of the term "drainage" The whole burden of the defendant's contention is that he was for more than 10 years prior to the institution of this suit in possession of the "drainage" of the river. I submit that this controversy offers no occasion for the definition of the term "drainage." I agree perfectly with the majority of the court as to the meaning of this word, but the defendant in error did not, under his deed, acquire any title to the "drainage" of the Vermejo river, any more than he acquired title to the county of Mora and the Territory of New Mexico. He bought a certain strip of land within the drainage, and on each side of the river; and I submit that the statement in the opinion of a majority of the court that "Dawson spoke to Maxwell in regard to where the drainage would place the line around the tract of land that he was to get, and therefore must have been understood to have known that Dawson was claiming such a line as the drainage would give him," is not supported by the testimony, for the only conversation he ever had with Maxwell as to his boundaries took place four miles distant from the land, and the only testimony in the record as to Maxwell's recognition of his boundaries is given in his own testimony, as follows, on page 246 of the record: "Q. State whether or not there was ever any pointing out of the boundaries of your possession of the land by you and Mr. Maxwell. (Objected to by plaintiff's counsel. Objection overruled. Exception reserved.) Answer. Just between us? Q. Yes, sir. A. Yes, sir; there was. Q. State what boundaries were pointed out. (Objected to by plaintiff's counsel. Objection overruled by the court. Exception reserved.) The Court: You can state what boundaries you fixed upon the earth's surface with regard to your respective possessions. A. The boundaries were what you read in that description there." On cross-examination he admits that the "pointing out" took place four miles distant from the land. Surely, no one can take this record, and upon examination thereof come to the conclusion that Maxwell, at the Vermejo station, four miles from the property in controversy, pointed out to the defendant in error a description of his boundaries, as set out in his plea in this case. I pass over the fact that plaintiff's vendor, Maxwell, is dead, and cannot be heard to give his explanation of the transaction. I pass over the further fact that, in my opinion, the testimony given by the defendant in error as to his conversation with Maulding and Curtis, his copartners, was clearly incompetent for the purpose of saying that, admitting its competency, it wholly fails, in my opinion, to maintain the defendant's claim to what he describes as the drainage of the river.

It is insisted for the defendant in error that at the date of his purchase from Maxwell, to wit, in 1868, the statute of frauds was not in force in this territory, and therefore a verbal sale, accompanied by a delivery of possession, operated to confer a perfect title.

I am of the opinion that this proposition is not only unsound in the abstract, but clearly erroneous in its application to the facts in this case, for admitting that the statute of Charles II had not at this time been incorporated into the jurisprudence of this country, and that title to land at this time was governed by the civil law, a paper title was recognized as creating the highest character of estate. But I insist that at the date of this transaction a deed was necessary for the conveyance of title to real estate in this territory. By the acquisition of this territory under the treaty of Guadalupe Hidalgo, we inherited, for the time being, the civil law as it was administered at that time by Spain and Mexico. It was held by the Supreme Court of the United States in the Percheman case,
475 wherein Chief Justice Marshall discusses this question very elaborately, that while the right to the soil is changed by the acquisition of territory, and while the allegiance of the inhabitants is shifted from the old to the new government, that their property rights are not altered or changed, and the acquisition of territory brings with it always an implied, and generally an express, obligation upon the part of the new government to preserve and protect those rights. 7 Pet. 86. Before proceeding, however, to examine the doctrine of the civil law, as administered by Spain and Mexico, at the time of the acquisition of this territory, it is well enough to observe that from that date the tendency has been towards the principles of common law. There are not wanting authorities to the effect that the mere acquisition of territory upon the part of the United States, and the extension over such territory of the jurisprudence of our government, carries with it, *proprio vigore*, the common law. It was held by the supreme court of Utah that it did not require any act of the legislature to adopt the common law in that country. Thomas *v.* Railroad Co., 1 Utah, 232. And in Ohio, where, by the act of October 1, 1795, the legislature adopted the common law as a rule of practice and decision, which act was repealed by the act of January 2, 1806, the supreme court of that State, in construing this latter act in the case of Drake *v.* Rogers, 13 Ohio St. 29, held that it did not require any statute to put in force the common law of England; and that, therefore, the repeal of the former act by the latter did not operate as a repeal or abrogation of the common law. Chancellor Kent, in speaking of the common law, as administered in this country, adopts the following language: "We live in the midst of the common law. We inhale it at every breath, imbibe it at every pore. We meet it when we wake and when we lie down to sleep, when we travel and when we stay at home. It is interwoven with the very idiom that we speak. And we cannot learn another system of laws without learning at the same time another language." It is admitted, however, that this doctrine does not apply so fully to the territories acquired by this country from France and Spain and Mexico, which were civil-law countries. What I affirm, however, is that the title set up by the defendant in this case cannot be supported by the most liberal construction of the civil law, as derived from the latter country. In the case of Hoen *vs.* Simmons, 1 Cal. 122, the supreme court of that

State uses the following language: "But the defendants say that by the Mexican laws a verbal contract for the sale of land was equally valid as if it were in writing. We think not, and so held in Harris *v.* Brown, 1 Cal. 98. There is no doubt about the correctness of that decision. There never has been a time, since the adoption of the Fuero Juzgo, in which lands could be conveyed under the Spanish or Mexican law without an instrument in writing, unless it were, perhaps, in the case of an executed contract, where corporeal possession was delivered at the very time of the sale by actual entry upon the premises, and the doing of certain acts analogous to the livery of seisin at common law. Had this not been so, one main branch of the revenues of the Spanish crown and Mexican Republic, called the 'Alcabala,' being a duty payable on the transfer of land, would have been easily evaded. By law 29, lib. 8, tit. 13, of the Recopilacion de Indias, every sale of real estate was required to be made before the escribano of the place where the contract was entered into, and, if there were no escribano, before the judge of first instance; and these officers were required to furnish a copy and statement of the writings or contracts made before them, with the day, month, and year in which they were made, the names of the seller and purchaser, and the property sold and exchanged, and the price. Arrillaga's Decretes, (volume for 1838, p. 421.)" This opinion concludes with the following declaration: "We do not doubt that a writing was as necessary for the transfer of lands in Mexico as it is in the United States." This was also affirmed in the case of Hayes *v.* Bona, 7 Cal. 159, where the court, speaking through Mr. Justice Murray, said: "In Hoen *v.* Simmons, 1 Cal. 122, this court held that a verbal sale of land was not valid under the Mexican law. As a general proposition, it may be stated that under the Spanish law a sale of real estate by parol would not be void *per se*, and that the distinction between parol contracts and specialties, known to the common law, does not exist under the civil law, or the Mexican system of jurisprudence heretofore in force. By Law 29, bk. 8, tit. 13, of the Recopilacion de Indias, every sale of real estate is required to be made before the escribano of the place where the contract is entered into, or, where there is no escribano, the judge of the first instance." This whole question was afterwards disposed of in a very summary manner in the case of Stafford *v.* Lick, 10 Cal. 12, in an opinion delivered by Chief Justice Terry; Justices Field and Burnett concurring. The case is a short one, and I quote it in full: "This is an action of ejectment for a lot in San Francisco. Both parties deraign title from the same source, defendants claiming under a paper executed on the 6th of October, 1846, which is in the following words: 'By this present I give ample and sufficient power to Don (17) Jose de Jesus Noe to use or dispose of my lot, which I hold (or have) granted, as may seem best to him; and in testimony I give the present power, in the place of Yerba Buena, the 6th day of October, 1846. Maximo Z. Fernandez,'—and the main question raised by the record is whether this paper is a sufficient conveyance. In Hayes
476 *v.* Bona, 7 Cal. 158, we held that contracts for the sale of

land, under the Mexican law, and by the custom of California, required to be in writing, 'and although the forms prescribed were not strictly followed, still it was necessary that the instrument should contain at least the names of the parties, the thing sold, the date of the transfer and the price paid.' This view is decisive of this case, and on the authority of the opinion in Hayes *v.* Bona the judgment of the court below is reversed." It seems to me that, in the absence of any statutory legislation on the subject, this disposes of the question, so far as concerns the position taken by a majority the court,—that the sale of this 20,000 acres from Maxwell to the defendant in error was a good civil-law sale. The most liberal interpretation of that contract does not bring it within a single requirement of the civil law, as it existed at that time. There were no well-defined boundaries; there was no delivery of possession; there was no acknowledgement before any of the authorities; there was no erection of monuments; there was no writing containing the names of the parties, the thing sold, the date of the transfer, and the price paid. Indeed, the whole transaction did not exhibit the faintest shadow of a trace of civil-law conveyance of real estate, as understood and administered by the laws of Mexico. But we are not left to any doubtful construction of the civil law in determining whether the defendant in error took any title under the verbal arrangement with Maulding and Curtis, which he says was afterwards recognized by Maxwell pointing out to him his boundaries at a distance of four miles. The legislature of this Territory, in 1852, thought it necessary, in order to preserve Spanish and Mexican titles derived before its acquisition, to pass an act specially validating them, and for that purpose provided by the act of January 9, 1852, that "all manner of contracts celebrated under the laws of Mexico shall be and are held settled under the same laws, without being affected in the final decision of them by the application of any territorial law." It was further provided that contracts entered into from the time of its occupation by Gen. Kearney should be governed by the rule or law under which they were authorized, without being annulled in any manner, and this provision was made especially applicable to "grants of tillable lands made by the authorities of the same period." It seems, however, that even at that early date the people of this Territory were anxious to reform the civil-law mode of acquiring real estate, and, fearing lest the provisions already quoted might in some manner be regarded as authority for the continuation of that system, the same legislature, three days thereafter, to wit, on the 12th day of January, 1852, enacted certain provisions which are carried into the compiled laws at section 2748, which provisions created a perfect code for the regulation of transactions involving the title to real estate. The third section of that act provides, substantially, that any person holding any right or title to real estate in this Territory, be it absolute or limited, in possession, remainder, or reversion, may convey the same in the manner and "subject to the restrictions prescribed by this act." The thirteenth section provided for "signing, acknowledging, and the certification and registration of such titles,"

while section 20 made such writing evidence in all the courts without further proof. It was while these statutes were in force that this transaction took place. It was for the purpose of conveying the estate under this statute that the deed from Maxwell to Dawson was executed, and by the latter recorded. It was under this deed that Dawson held possession of the land until the lapse of time and the death of Maxwell made it possible for him, as he supposed, to acquire title to a much larger portion of land under a verbal agreement tenfold more vague and uncertain than the language used by the sons of Heth in the transfer to Abraham of the country surrounding the cave of Macpelah. It is insisted, however, for the defendant, that his vendor, Maxwell, recognized the boundaries which he sets out in his plea. I have already endeavored to show that this so-called recognition is too vague to be regarded by this court as fixing the boundaries sought to be established in this case. But, were it otherwise, there is another consideration that, to my mind, destroys this defense: Passing over the fact that Maxwell is dead, and therefore cannot be heard to tell his story, I am of the opinion that any statements made by Maxwell calculated to impair the title of his vendee, the plaintiff in this case, were incompetent. Monnot *v.* Husson, 39 How. Pr., 453.

477 UNITED STATES OF AMERICA, }
Territory of New Mexico, County of Santa Fé, } *ss:*

I, H. S. Clancy, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the above and foregoing is a true and complete copy of the record of proceedings had, judgment given, and opinions filed in the cause herein mentioned as the same now appears remaining in my office.

Seal Supreme Court, Territory of New Mexico.

In witness whereof I have hereunto subscribed my name and affixed the seal of the supreme court of the Territory of New Mexico this 2nd day of November, A. D. 1893.

H. S. CLANCY, *Clerk.*

478 In the Supreme Court of the United States.

THE MAXWELL LAND GRANT COMPANY, Plaintiff in Error,
vs.
JOHN B. DAWSON, Defendant in Error. } Error to the Supreme Court of the Territory of New Mexico.

Now, on the 9th day of September, A. D. 1893, comes the said The Maxwell Land Grant Company, by T. B. Catron and Frank Springer, its attorneys, and says that in the record and proceedings in the cause lately pending in the supreme court of the Territory of New Mexico, wherein said The Maxwell Land Grant Company was plaintiff in error and the said John B. Dawson was defendant in error, there is manifest error, in this, to wit: That the said su-

preme court by its judgment in said cause affirmed the judgment of the district court for the fourth judicial district of the Territory of New Mexico, sitting — and for the county of San Miguel, whereas the judgment of the said district court was erroneous, in this, to wit:

I.

In denying the motion of plaintiff for a new trial.

II.

In excluding the deeds of Lucien B. Maxwell and wife to Miller, Maulding, and Curtis for lands on the Vermejo, offered in evidence by plaintiff, as appears in folios 1694–1696 of Record.

III.

In admitting the testimony of J. B. Dawson as to oral statements of Maulding and Curtis touching their contract for purchase of a tract of land as follows, to wit:

"They told me that they had a contract for a piece of land there, beginning at this dam that has been described, running down to the river to the lower end of what is known as the O'Donnell farm, with all the drainage of the water that flowed from between
479 this dam and the lower end of the O'Donnell farm. They asked me if I wanted some of it. I studied a good while and said, 'If you will let me have the upper part,' which they agreed to." Folio 1191.

Also the following, to wit: "Curtis and Maulding told me that this whole drainage belonged to this block of land and this was my part, and I talked with them often about it, and I talked with others. I talked with Maxwell, and Maxwell and myself were frontiersmen at this time when I talked with them at the stage station, and he observed that I did not get as much land." Folio 1203.

Also in admitting the testimony of other parties touching Dawson's ownership of and claim to the land in question, to wit: "Q. Have you ever heard the people other than Dawson residing in that vicinity speak of this land as belonging to any one? A. Yes, sir. Q. State the names of the persons that they always spoke of it as belonging to. A. They have always spoken of it as belonging to Mr. John Dawson. Q. How long have you heard the people in that vicinity speak of it in that way? A. Since I have been in the country." Folio 304.

Also, "Q. While you were in the Vermejo for that year or two did you have any conversation with the people residing in that neighborhood as to who owned this tract of land that I read you the description of? A. Yes, sir. Q. Was that tract of land spoken of as belonging to any one? A. Yes, sir. Q. As belonging to whom? A. Mr. Dawson's, and also of Miller, Maulding, and Curtis. Q. Have you heard them speak of Miller and Maulding's land, too? A. Yes, sir. Q. Where were they with reference to this tract of

land I read you the description of? A. They were further down the creek. Q. Did you ever hear the people there speak of Dawson's south boundary line, as to where it was? A. Yes, sir. Q. What was it, according to their statements? A. They said it was above Lacy's ranch, adjoining Dawson's land. At that time it belonged to De Graftenreid. Q. During the time you were there did you hear the people residing in that vicinity talk about Dawson's south boundary line? A. Yes, sir. Q. What did they speak of as his south boundary line? A. They said he was going to fence in his portion of the land from this stone fence, when it was found he was going to continue the stone fence to the high point to the divide."

Folios 372–378.

480 Also at folio 118 the following: "A. He claimed from the dam on the Vermejo above his house to a rock fence below his house and all drainages from either side."

Also at folio 270 the following: "Q. Was that land ever spoken of as the land of any one? A. Yes, sir. Q. Of whom? A. John B. Dawson."

Also at folio 424 the following: "Q. Have you ever heard the people in that neighborhood other than Dawson speak of any one as being the owner of this tract of land? A. Yes, sir. Q. Of whom did they speak as the owner of the land? A. As Mr. Dawson's."

Also at folio 504 the following: "Q. Did you hear any neighbors around there speak of this tract of land as the property of any one? A. Yes, sir; I have heard a great many speak of it. Q. They spoke of it as whose property? A. John B. Dawson's."

Also at folio 616 the following: "Q. Did you ever hear any of these people speak of this land as belonging to any one? A. Yes, sir. Q. They have spoken of it as belonging to whom? A. To Mr. Dawson."

Also at folio 688 the following: "A. I told them that my father claimed all the drainage of the Vermejo river that was above his lower line, and the heads of the cañons—all the drainage above his lower line that come in on the property of the Horseshoe property, including his own place."

Also at folio 857 the following: "A. It was the upper tract of this purchase or the upper part of this purchase that Maxwell made to us on the Vermejo river."

Also at folio 878 the following: "A. I talked with my neighbors and we spoke of his upper tract. We often talked about this piece of land and Dawson owning this piece of land with its drainage."

Also at folio 880 the following: "Q. While this defendant was in possession of this land in 1868 did Maxwell have actual knowledge of that possession? A. Yes, sir."

481 Also at folio 923 the following: "Q. Did you have any conversation with any one in that neighborhood as to who claimed to own this tract of land? A. Yes, sir; I have heard several say who owned it. Q. Who did they speak of as owning it? A. They said Mr. Dawson was the owner of it."

Also at folio 927 the following: "Q. Do you know whether Max-

well knew that Dawson was in possession of this tract of land? A. He knew that he was."

Also at folio 970 the following: "Q. What land did these people claim to have possession of at that time? A. They claimed to have possession of the land from the dam that now belongs to me down the river to a place known as the O'Donnell farm, to the lower end of the O'Donnell farm, with all the drainage and lands the water would flow in between these points to the Vermejo river."

Also at folio 981 the following: "Q. Did Maxwell know that you were in possession of that tract of land? A. Yes, sir."

Also at folio 1205 the following: "Q. What was to be the extent of that southern line? A. There was an extension from the east end, across Lacey cañon, across Saltpeter cañon to the top of the divide of Saltpeter cañon and the waters flowing to the east; and the other end, an extension from the rock fence across Lacey cañon to the top of the divide between Lacey cañon and the Van Bremmer cañon. Q. Do you know why that line was established there at all? A. Yes, sir. Q. Why? A. To divide my property from the next property below."

482 IV.

In giving to the jury instructions Nos. 1 and 2, requested by defendant, in words following, to wit: "You are instructed that the patents, documents, deeds, and other papers introduced in evidence by the plaintiff are sufficient to vest the legal title to the whole of the land in controversy in plaintiff and to entitle plaintiff to the possession of the whole of said lands unless you find from the evidence that defendant has a legal right to *to* the possession thereof or of some part thereof either by virtue of a deed of conveyance from Lucien B. Maxwell and wife or by adverse possession for a period of ten years or more prior to the commencement of this suit or unless you find from the evidence that plaintiff has failed to prove that the land in controversy or some portion thereof is not the whole or part of the 15,000 acres of land excepted in the conveyance from Frank R. Sherwin and others to the Maxwell Land Grant Company under which plaintiff claims title to said land." Folio 1826.

"You are instructed that the burden of proof is on the plaintiff to show that it has the legal title to and the right of possession of all the lands in controversy, and, unless you find from the evidence that the lands in controversy were included in and not excepted from the deeds of conveyance under which plaintiff claims title, plaintiff cannot recover in action." Folio 1827.

V.

In giving instructions Nos. 3, 4, 5, 6, 7, and 8, requested by defendant, in words following, to wit:

"You are also instructed that if you find from a preponderance of the evidence that the defendant Dawson took adverse possession in

the year 1868 of the whole or part of the lands described in his plea and continued such adverse possession without interruption for a period of ten years or more, such adverse possession so continued for the said period of ten years would operate to extinguish the title under which plaintiff claims and to vest in said John B. Dawson the legal title to the lands so, as aforesaid, occupied by him for said period of ten years, and in that event it is immaterial in this case whether defendant held exclusive adverse possession of the
483 land described in his plea or not after such period of ten years had elapsed and you should find the defendant not guilty as to the land so occupied by him." Folio 1829.

"The jury are instructed that one of the essential elements of adverse possession of land is that such possession should be exclusive, but the mere pasturing of stock upon the land of which defendant claimed adverse possession by persons who came upon the land with their stock temporarily without setting up for themselves any adverse claims to such lands and who came upon such lands with their stock with the permission of defendant would not make the possession of defendant the less exclusive or the less adverse." Folio 1830.

"The jury are instructed that if you find from a preponderance of the evidence that the defendant Dawson took adverse possession of the whole or any part of the land in controversy in the year 1868 and continued such adverse possession and occupan-y without interruption for ten years or more, such possession so continued for the period of ten years would vest the legal title in defendant Dawson to the lands so as aforesaid adversely held and occupied for such period of ten years, and the acts of other parties in ranging stock on said lands since the year 1878 would in that case be mere acts of trespass, which could not affect defendant's right and title to said lands." Folio 1831.

"You are further instructed that in the year 1868 Lucien B. Maxwell was the legal owner of all the land in controversy in this suit and had a legal right to dispose of the same in any manner; and if you find from a preponderance of the evidence that Lucien B. Maxwell at any time during said year consented that defendant Dawson should occupy under claim of title or right the land described in his plea and designated the boundaries of such land, and if you further find from a preponderance of the evidence that said Dawson did so occupy said land, then you are instructed that such possession of the defendant Dawson from such time would be lawful and also adverse; and if the defendant Dawson continued in such possession for a period of ten years from such time and no demand was made upon said Dawson by said Maxwell or any person claiming title under him for the surrender of such possession, you will find defendant not guilty." Folio 1833–4.

484 "You are further instructed that every one in purchasing real estate is bound to take notice as to who holds possession of the land being purchased; and if you find from the evidence that the defendant, John B Dawson, at the time of the purchase of the land described in the declaration by the plaintiff in this case, was

then residing upon a portion of said land, the plaintiff was bound to take notice of the right or claim by which the said John B. Dawson so occupied the said tract of land or any part of the same, and that such occupation by the defendant would in law be constructive notice to the said plaintiff of any claim to said land by the defendant which could have been ascertained upon due inquiry, and whether the plaintiff made such inquiry or not cannot affect the rights of the defendant." Folio 1835.

"You are further instructed that possession of land, in order to be adverse, must be open and notorious; but if you find from a preponderance of the testimony that the legal owner of the land in question had actual knowledge of the possession by the defendant Dawson, then it is not so important whether the possession of the defendant Dawson was open and notorious or not, as the object of the possession being open and notorious is for the purpose of conveying information of the possession to such owner." Folio 1836.

VI.

In giving the following portion of instruction No. IV, given by the court on its own motion, to wit:

"Hence, you are instructed that if the defendant has proved by a preponderance of the evidence that he went into the possession of the tract of land in controversy, claiming the same adverse to the true owner, and continued in the open, exclusive, and uninterrupted possession of the same under such adverse claim for the period of ten years or more before the commencement of this action he will be deemed, in accordance with the provisions of the statute just read to you, to have divested the plaintiff of its title and rights, and to have become the true and legal owner of such premises."

485 Also in giving instruction No. V, given by the court on its own motion, as follows, to wit:

"You are further instructed that if the plaintiff or the plaintiff's grantor permitted the defendant to take possession of the tract of land in controversy, claiming all of it as his own, and to continue such possession openly, publicly, and adversely under such claim of title for an uninterrupted perio*n* of ten years or more, such possession will ripen into a right and title in the defendant, and forever afterwards prevent the plaintiff from taking possession of such property."

VII.

That the said supreme court, as by its opinion appears, in substance held and decided that the land in controversy, in the year 1868, was or could have been lawfully conveyed by a verbal contract.

VIII.

That the said supreme court, as by its opinion appears, in substance held and decided that under the deed from Maxwell to Daw-

son the land in controversy was conveyed by the use of the word "drainage."

Wherefore, for the above and many other manifest errors in the said record appearing on the face thereof, plaintiff prays that the said judgment of said supreme court of the Territory of New Mexico in said cause be reversed and held for naught, and that said court be ordered to enter a judgment reversing said judgment of said district court.

T. B. CATRON &
FRANK SPRINGER,
Attorneys for Plaintiff in Error.

486 In the Supreme Court of the United States.

THE MAXWELL LAND GRANT COMPANY, Plaintiff in Error,
vs.
JOHN B. DAWSON, Defendant in Error.
} Error to the Supreme Court of the Territory of New Mexico.

Frank Springer, of lawful age, being duly sworn, upon his oath says that he was in the court below and still is attorney for The Maxwell Land Grant Company, plaintiff in error in the above-entitled cause; that he is well acquainted with the land in controversy in said cause and the value thereof; that the value of the matter in dispute in said cause, exclusive of costs, is more than five thousand dollars.

FRANK SPRINGER.

TERRITORY OF NEW MEXICO, *County of San Miguel*, } *ss.*:

On this 9th day of September, A. D. 1893, before me, a notary public in and for said county and Territory, came Frank Springer, who, being by me duly sworn, did depose and say that the foregoing affidavit by him subscribed is true.

Witness my hand and notarial seal the day and year last above written.

[Seal of John D. W. Veeder, Notary Public, Territory of New Mexico.]

JOHN D. W. VEEDER,
Notary Public.

487 UNITED STATES OF AMERICA, *ss.*:

To John B. Dawson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within sixty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court *court* of the Territory of New Mexico, wherein The Maxwell Land Grant Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James O'Brien, chief justice of the supreme court of the Territory of New Mexico, this ninth day of September, in the year of our Lord one thousand eight hundred and ninety-three.

JAMES O'BRIEN,
Chief Justice, &c.

488 Due service of the within citation admitted this ninth day of September, 1893.

A. A. JONES,
Attorney for Defendant in Error.

489 THE MAXWELL LAND GRANT CO., Plaintiff in Error,
vs.
JOHN B. DAWSON, Defendant in Error. | Term No., 1065.

It is agreed that the annexed sketch map, based, as to the outline and dimensions, on Defendant's Exhibit No. 3, may be attached to the record in the case of The Maxwell Land Grant Company, plaintiff in error, *vs.* John B. Dawson, defendant in error, in the Supreme Court of the United States, and that it shows sufficient for the purpose of the hearing in that court, all that is deemed material by either party appearing on the various other maps used on the trial, and that no other maps need be sent up or printed with the record.

Dated Las Vegas, N. M., December 11th, 1893.

FRANK SPRINGER,
Counsel for Plaintiff in Error.
ANDRIEUS A. JONES,
Counsel for Defendant in Error.

(Here follows diagram marked p. 490.)

Endorsed on cover: Case No. 15,449. New Mexico Territory supreme court. Term No., 1065. The Maxwell Land Grant Company, plaintiff in error, *vs.* John B. Dawson. Filed November 21, 1893.

Office Supreme Court U. S.
FILED.
DEC 30 1893
JAMES H. McKENNEY,
CLERK.

No .....

IN THE

Supreme Court of the United States,

October Term, 1893.

TERM No. 1065.

THE MAXWELL LAND GRANT CO., *Plaintiff in Error,* vs. JOHN B. DAWSON, *Defendant in Error.*	In Error to the Supreme Court of the Territory of New Mexico.

Brief for Plaintiff in Error.

T. B. CATRON,
FRANK SPRINGER,
Counsel for Plaintiff in Error.

CARRUTH PRINTER AND BINDER EAST LAS VEGAS

No.....

IN THE

Supreme Court of the United States,

October Term, 1893.

TERM No. 1065.

THE MAXWELL LAND GRANT CO., *Plaintiff in Error,* *vs.* JOHN B. DAWSON, *Defendant in Error.*	In Error to the Supreme Court of the Territory of New Mexico.

Brief for Plaintiff in Error.

STATEMENT.

This is an action of ejectment, brought to recover possession of certain lands within the Beaubien and Miranda or Maxwell Land Grant. The plaintiff declares for the lands described in a United States patent to Beaubien and Miranda. Defendant disclaims as to all the land thus described except a certain tract described in his first addition-

al plea (Rec. p. 4),* as to which he pleads not guilty, and in his third and fourth pleas takes defense as to this tract under the statute of limitations. Plaintiff, by its replications to these pleas (Rec. p. 7, 8), joins issue, except as to a certain part of the land claimed by defendant, which part it admits to be the property of defendant.

The real controversy, therefore, is as to the ownership of the land lying outside of the boundaries of a tract admitted to belong to defendant, and within the boundaries of a larger tract claimed by defendant. That is to say, defendant's ownership of a certain tract is admitted. He claims not only this, but a larger one surrounding it, which is disputed. The contention is over the land embraced in the excess. The map attached to the record shows the relation of the two tracts, and the general facts of location, sufficiently to illustrate the questions arising.

The verdict and judgment in the District Court were in favor of the defendant, as to the entire tract claimed by him. The judgment was affirmed by the Supreme Court of New Mexico, Freeman, J., dissenting. Plaintiff has, by writ of error, brought the case before this Court for review, and has filed the following

*The references to the Record throughout this brief are to the original paging, found on the margin of the printed record.

ASSIGNMENT OF ERRORS.

1.

In denying the motion of plaintiff for a new trial.

2.

In excluding the deeds of Lucien B. Maxwell and wife to Miller, Maulding and Curtis, for lands on the Vermejo, offered in evidence by plaintiff, as appears in folios 1694–1696 of Record.

3.

In admitting the testimony of J. B. Dawson as to oral statements of Maulding and Curtis touching their contract for purchase of a tract of land as follows, to wit:

"They told me that they had a contract for a piece of land there, beginning at this dam that has been described, running down to the river to the lower end of what is known as the O'Donnell farm, with all the drainage of the water that flowed from between this dam and the lower end of the O'Donnell farm. They asked me if I wanted some of it. I studied a good while and said, 'If you will let me have the upper part,' which they agreed to." (Rec. p. 298.)

Also the following, to-wit: "Curtis and Maulding told me that this whole drainage belonged to this block of land, and this was my part; and I talked with them often about it, and I talked with others. I talked with Maxwell, and Maxwell and myself were frontiersmen at this time when I talked with him at the stage station, and he observed that I did not get as much land." (Rec. p. 301.)

Also at page 302 the following: "Q. What was to be the extent of that southern line? A. There was an extension from the east end, across Lacey cañon, across Saltpeter cañon to the top of the divide of Saltpeter cañon and the waters flowing to the east; and the other end, an extension from the rock fence, across Lacey cañon to the top of the divide between Lacey cañon and the Van Bremmer cañon. Q. Do you know why that line was established

there, at all? A. Yes, sir. Q. Why? A To divide my property from the next property below."

Also; in admitting the testimony of other parties touching Dawson's ownership of the land in question, to-wit: "Q. Have you ever heard the people other than Dawson residing in that vicinity speak of this land as belonging to any one? A. Yes, sir. Q. State the names of the persons that they always spoke of it as belonging to. A. They have always spoken of it as belonging to Mr. John Dawson. Q. How long have you heard the people in that vicinity speak of it in that way? A. Since I have been in the country." (Rec. p. 76.)

Also; "Q. While you were up on the Vermejo for that year or two, did you have any conversation with the people residing in that neighborhood as to who owned this tract of land that I read you the description of? A. Yes, sir. Q. Was that tract of land spoken of as belonging to any one? A. Yes, sir. Q. As belonging to whom? A. As Mr. Dawson's; and also of Miller, Maulding and Curtis. Q. Have you heard them speak of Miller and Maulding's lands too? A. Yes, sir. Q. Where were they with reference to this tract of land I read you the description of? A. They were further down the creek. Q. Did you ever hear the people there speak of Dawson's south boundary line as to where it was? A. Yes, sir. Q. What was it according to their statements? A. They said it was above Lacy's ranch adjoining Dawson's land. At that time it belonged to De Graftenreid. Q. During the time you were there did you hear the people residing in that vicinity talk about Dawson's south boundary line? A. Yes sir. Q. What did they speak of as his south boundary line? A. They said he was going to fence in his portion of the land from this stone fence—when it was found he was going to continue the stone fence to the high point—to the divide." (Rec. p. 93.)

Also at page 30 the following: "A. He claimed from the dam on the Vermejo above his house to a rock fence below his house, and all drainages from either side."

Also at page 68 the following: "Q. Was that land ever spoken of as the land of any one? A. Yes, sir. Q. Of whom? A. John B. Dawson."

Also at page 106 the following: "Q. Have you ever

heard the people in that neighborhood, other than Dawson, speak of any one as being the owner of this tract of land? A Yes, sir. Q. Of whom did they speak as the owner of the land? A. As Mr. Dawson's."

Also at page 126 the following: "Q. Did you hear any neighbors around there speak of this tract of land as the property of any one? A. Yes, sir; I have heard a great many speak of it. Q. They spoke of it as whose property. A. John B. Dawson's.

Also at page 154 the following: "Q. Did you ever hear any of these people speak of this land as belonging to any one? A. Yes, sir. Q. They have spoken of it as belonging to whom? A. To Mr. Dawson."

Also at page 172 the following: "A. I told them that my father claimed all the drainage of the Vermejo river that was above his lower line, and the heads of the cañons, all the drainage above his lower line that come in on the property of the Horseshoe property, including his own place."

Also at page 215 the following: "A. It was the upper tract of this purchase, or the upper part of this purchase that Maxwell made to us on the Vermejo river."

Also at page 220 the following: "I talked with my neighbors, and we spoke of his upper tract. We often talked about this piece of land, and Dawson owning this piece of land, with its drainage."

Also at page 221 the following: "Q. While this defendant was in possession of this land in 1868, did Maxwell have actual knowledge of that possession? A. Yes, sir."

Also at page 231 the following: "Q. Did you have any conversation with any one in that neighborhood as to who claimed to own this tract of land? A. Yes, sir; I have heard several say who owned it. Q. Who did they speak of as owning it? A. They said Mr. Dawson was the owner of it."

Also at page 232 the following: "Q. Do you know whether Maxwell knew that Dawson was in possession of this tract of land? A. He knew that he was."

Also at page 243 the following: "Q. What land did

these people claim to have possession of at that time? A. They claimed to have possession of the land from the dam that now belongs to me, down the river, to a place known as the O'Donnell farm, to the lower end of the O'Donnell farm, with all the drainage and lands the water would flow in between those points to the Vermejo river."

Also at page 246 the following: "Q. Did Maxwell know that you were in possession of that tract of land. A. Yes, sir."

4.

In giving to the jury instructions Nos. 1 and 2, requested by defendant, in words following, to-wit: "1. You are instructed, that the patents, documents, deeds, and other papers, introduced in evidence by the plaintiff, are sufficient to vest the legal title to the whole of the land in controversy in plaintiff, and to entitle plaintiff to the possession of the whole of said lands, unless you find, from the evidence, that defendant has a legal right to the possession thereof, or of some part thereof, either by virtue of a deed of conveyance from Lucien B. Maxwell and wife, or by adverse possession for a period of ten years, or more, prior to the commencement of this suit, or, unless you find, from the evidence, that plaintiff has failed to prove that the land in controversy, or some portion thereof, is not the whole, or part of the 15,000 acres of land excepted in the conveyance from Frank R. Sherwin and others to the Maxwell Land Grant Company, under which plaintiff claims title to said land." (Rec. p. 457.)

"2. You are instructed, that the burden of proof is on the plaintiff to show that it has the legal title to, and the right of possession of, all the lands in controversy, and, unless you find, from the evidence, that the lands in controversy were included in and not excepted from the deeds of conveyance under which plaintiff claims title, plaintiff cannot recover in this action." (Rec. p. 457.)

5.

In giving instructions Nos. 3, 4, 5, 6, 7 and 8, requested by defendant, in words following, to-wit: (Rec. pp. 457 to 460.)

"3. You are also instructed, that if you find from a preponderance of the evidence, that the defendant, Daw-

son, took adverse possession in the year 1868, of the whole or part of the lands described in his plea, and continued such adverse possession without interruption for a period of ten years, or more, such adverse possession so continued for the said period of ten years would operate to extinguish the title under which plaintiff claims, and to vest in said John B. Dawson the legal title to the lands so as aforesaid occupied by him for said period of ten years, and, in that event, it is immaterial in this case whether defendant held exclusive adverse possession of the land described in his plea, or not, after such period of ten years had elapsed, and you should find the defendant not guilty as to the land so occupied by him."

"4. The jury are instructed, that one of the essential elements of adverse possession of land is that such possession should be exclusive, but the mere pasturing of stock upon the land of which defendant claimed adverse possession, by persons who came upon the land with their stock, temporarily, without setting up for themselves any adverse claims to such lands, and who came upon such lands with their stock with the permission of defendant, would not make the possession of defendant the less exclusive, or the less adverse."

"5. The jury are instructed, that if you find from a preponderance of the evidence that the defendant, Dawson, took adverse possession of the whole, or any part, of the land in controversy, in the year 1868, and continued such adverse possession and occupancy without interruption for ten years, or more, such possession so continued for the period of ten years would vest the legal title in defendant, Dawson, to the lands so as aforesaid adversely held and occupied for such period of ten years; and the acts of other parties in ranging stock on said lands since the year 1878, would, in that case, be mere acts of trespass, which could not affect defendant's right and title to said lands."

"6. You are further instructed, that in the year 1868 Lucien B. Maxwell was the legal owner of all the land in controversy in this suit, and had a legal right to dispose of the same in any manner; and if you find from a preponderance of the evidence that Lucien B. Maxwell at any time during said year consented that defendant, Dawson, should occupy, under claim of title or right, the land described in his plea, and designated the boundaries of such land; and

if you further find from a preponderance of the evidence that said Dawson did so occupy said land, then you are instructed that such possession of the defendant Dawson from such time would be lawful and also adverse; and if the defendant Dawson continued in such possession for a period of ten years from such time, and no demand was made upon said Dawson by said Maxwell, or any person claiming title under him, for the surrender of such possession, you will find defendant not guilty."

"7. "You are further instructed that every one in purchasing real estate is bound to take notice as to who holds possession of the land being purchased. And if you find from the evidence that the defendant, John B. Dawson, at the time of the purchase of the land described in the declaration by the plaintiff in this case, was then residing upon a portion of said land, the plaintiff was bound to take notice of the right or claim by which the said John B. Dawson so occupied the said tract of land, or any part of the same; and that such occupation by the defendant would in law be constructive notice to the said plaintiff of any claim to said land by the defendant which could have been ascertained upon due inquiry, and whether the plaintiff made such inquiry or not, cannot affect the rights of the defendant."

"8. You are further instructed that possession of land, in order to be adverse, must be open and notorious; but if you find from a preponderance of the testimony that the legal owner of the land in question had actual knowledge of the possession by defendant Dawson, then it is not so important whether the possession of the defendant Dawson was open and notorious or not, as the object of the possession being open and notorious is for the purpose of conveying information of the possession to such owner."

6.

In giving the following portion of instruction No. IV, given by the court on its own motion, to-wit: (Rec. p. 447)

"Hence you are instructed, that if the defendant has proved by a preponderance of the evidence that he went into the possession of the tract of land in controversy, claiming the same adverse to the true owner, and continued in the open, exclusive and uninterrupted possession of the

same under such adverse claim, for the period of ten years, or more, before the commencement of this action, he will be deemed, in accordance with the provisions of the statute just read to you, to have divested the plaintiff of its title and rights, and to have become the true and legal owner of such premises."

Also in giving instruction No. V., given by the Court on its own motion as follows, to-wit: (Rec. p. 447.)

"You are further instructed, that if the plaintiff, or the plaintiff's grantor, permitted the defendant to take possession of the tract of land in controversy, claiming all of it as his own, and to continue such possession openly, publicly, and adversely, under such claim of title, for an uninterrupted period of ten years or more, such possession will ripen into a right and title in the defendant, and forever afterwards prevent the plaintiff from taking possession of such property."

7.

That the said Supreme Court as by its opinion appears, in substance held and decided, that the land in controversy in the year 1868 was, or could have been lawfully conveyed by a verbal contract.

8.

That the said Supreme Court as by its opinion appears, in substance held and decided, that under the deed from Maxwell to Dawson, the land in controversy was conveyed by the use of the word "drainage."

ARGUMENT.

I.

Plaintiff deraigns title from the original grantees, through Lucien B. Maxwell.

Defendant's claim to the land described in his plea is not founded upon any paper title, but solely upon a ten year's adverse possession thereof. It appears in evidence, however, that he entered into possession under a purchase from Maxwell, the then owner of the property, in 1868, for which he paid $3,700. In 1869 he received from Maxwell a deed, dated January 7th, 1869, reciting a consideration of $3,700, conveying a tract of land described as follows:

"All the land or ground now suitable for farming or agricultural purposes, in the valley or drainage of the Vermejo river, county of Mora, (then embracing what is now Colfax county,) Territory of New Mexico, within the following boundaries, to-wit: Beginning at a certain dam at the head of a certain ditch at the right hand point of rocks, from thence running down on the north side of said river to a certain other pile of rocks, on a knoll or elevation, with some bushes near thereto; thence running very near southward across said river to a pinon tree to the right of a ridge near a wash, which tree is marked with the letter 'L;' thence running up said river on the south side to the place of beginning; containing about .....acres more or less."

This deed was recorded in the office of the recorder of Mora county, February 12, 1869. The original deed was produced upon the trial, in the possession of defendant himself, upon cross-examination, and introduced over the objection of his counsel. (Rec. pp. 283, 288–296.)

It is proven by the testimony of defendant's son, Augustus Dawson (Rec. p. 196–197), that defendant claimed his place under a deed from Maxwell, and showed a deed (which defendant himself afterwards admitted was the above deed, p. 290) as being the deed for the place in question in this suit; and that his son told various parties that his father claimed under this deed.

It also appears from defendant's own testimony, that in 1871 he showed this deed to Morley, the representative of the Maxwell company, who had come to survey his land. (Rec. pp. 253, 254, 283, 290.)

There is no dispute about the upper and lower calls of this deed. Their location is perfectly established. The upper one is the dam from which Dawson's irrigating ditch is taken out, and the lower one is the line of a stone fence built by Dawson to mark his lower boundary. It was marked by a piñon tree with a letter "L" marked on it, which Mr. Dawson says he saw when he first went there, and that it was about one hundred yards from the bank of the river, and that the south end of his stone fence is close to it. (Rec. pp. 291-292.)

The tract of land corresponding substantially to the description in this deed is shown upon the map attached to the record. Mr. Dawson entered upon the land immediately on his purchase from Maxwell, and has made from time to time since numerous and valuable improvements, such as houses, orchards and fences, and has put the land under high cultivation by means of irrigating ditches. But all these improvements, except some cattle fences built within the last ten years, have been made upon the land described in this deed, and by plaintiff's replication ad-

mitted to belong to Dawson. The defendant is therefore in the position of having entered into possession of his land by permission of Maxwell, the then owner, under a purchase from him; paid him for it; received from him a deed as evidence of the purchase, which deed was immediately recorded; of having exhibited this deed to his son as evidence of his claim, and given out to his neighbors, through his son, that he claimed his place under this deed; of having exhibited the deed to the agent of Maxwell's vendee, who came to survey the land and define its boundaries; of having made his most valuable and permanent improvements upon the land described by the deed; but now, after the lapse of over twenty years, abandoning and repudiating the deed, and setting up a title by adverse possession alone to a very much larger tract, extending far beyond the boundaries described in the deed.

The length of Dawson's lower line as claimed, and as shown on the map, is six miles. (Rec. p. 208.) Computing on this basis, it will be found that the tract admitted to belong to Dawson contains about 1000 acres, while the area of the tract claimed by him is something over 31 square miles, or about 20,000 acres.

A vast amount of testimony was introduced by defendant to establish such adverse possession, and by plaintiff to disprove it. It consisted solely of ranging cattle, horses and hogs upon the land, and acts incident thereto. The question was left to the jury, under instructions quite liberal to defendant in this respect; and we understand quite well that an appellate court will not sit to review a mass of conflicting testimony to determine where the preponderance is. But if, taking the most favorable view for the defend-

ant of his own testimony, and those of his witnesses who show the best means of knowledge, it can be shown that it does not establish adverse possession, within the meaning of the law, that will present a question which this Court can consider, and upon which it is entirely proper to reverse the judgment. The two persons best of all qualified to give a correct account of the acts done by him on the land, are the defendant himself, and his son.

According to the son, whose testimony begins at p. 164 of the record, from the year 1872 to 1883 Mr. Dawson had an average of 125 horses, 200 cattle and some hogs, which were turned loose in the cañons within the tract. He looked after them from time to time, and if cattle belonging to other people were there he turned them out. The land claimed in connection with these acts was the drainage of the Vermejo from the dam to the rock fence; his father claimed the land under a deed from Maxwell; the land under cultivation was about 300 acres.

Defendant himself, on direct examination, states that he used the tract described in his plea since 1868 for general ranching purposes, farming, and the raising of stock; that he had cattle and horses ranging on it from time to time, and drove t' e cattle of others off; that he claimed the land as his. On cross-examination he states that the cattle were just turned loose in the cañons, and moved from place to place as the grass was eaten; that they were not herded, but were watched pretty closely to keep the Indians from killing them; that he kept his cattle as near as he could on his own place.

The testimony of the other witnesses for defendant adds substantially nothing to this, except that some of his

immediate neighbors and relations recognized Mr. Dawson's cattle range, and tried to keep their animals away from it and that they understood his claim to be the drainage of the Vermejo.

It does not appear from any of the testimony that there was any well defined boundary, either natural or artificial, to limit the ranging of cattle. A mere summit of a watershed or drainage area, would not constitute such a boundary, for that purpose. The fences, outside of those enclosing the farming lands, were all built within the last ten years, and cut no figure in this question. There was no continuous occupation of the whole or any part of the cattle range. The number of animals kept on it was insignificant compared with the area now claimed. They occupied first one place and then another, or they scattered at will among the hills and cañons. The neighbors' cattle ranged there too, but were occasionally driven away or taken to other ranges by their owners. The "claim" of Mr. Dawson, during most of this time was equally indefinite, and was only described by the vague and shadowy term *drainage*. It was understood that Dawson *claimed the drainage*, and that he claimed it *under a deed from Maxwell*. The beautiful definition of boundaries, exhibited in the pleas of defendant, and the map made to fit them, is manifestly the product of the acute and accurate mind of defendant's counsel, and was never thought of until after this suit was brought.

Now it is of the essence of adverse possession, in order to ripen into a title under the statute of limitations, that it must be *continuous*, *notorious* and *certain*;—all three of which are lacking here. The whole testimony for defendant, when carefully examined, shows that there never was

any well defined and certain claim of ownership by Mr. Dawson, except to the lands of his farm described in the deed. In view of the custom as to grazing cattle on the open range during the period in question, a claim to a cattle range was not necessarily a claim of title to the land. Such acts as those of Mr. Dawson would not tend to put the owner on inquiry, or notify him of a claim of title. Especially was this true in his case, because the deed under which he bought stood upon the public records as the highest and most notorious evidence of what his real claim was. So long as no steps were taken to have the deed reformed by some judicial proceeding, the owner of the land had a right to rely on it as defining and limiting Dawson's claim. In short, everything that was notorious about Dawson's claims and acts was calculated to conceal from the true owner all knowledge or suspicion of any such claim as is now set up. It was never the intention of the law to divest a title, and transfer it to a trespasser, by the agency of such a claim.

So, also, as to the alleged possession. It was never of the character to satisfy the law of adverse possession. There was a complete absence of continuity, either as to time or place. It was a mere roving occupancy, never sufficient to cover the whole or any considerable part of the land at one time. It was of the same kind as that by which others in the neighborhood occupied, as cattle ranges, lands which they considered to be public domain, and without any pretence of claiming title in themselves. The testimony shows, also, that the grazing of these animals was almost wholly confined to the cañons where the best grass was, and that there was very little of it on the

lands between the cañons. Yet the lands between the cañons is chiefly valuable for the timber upon it, and the coal under it. It cannot be said to have been used by defendant, in any manner, for the uses for which it is adapted —and this is another well known criterion of adverse possession.

We submit, therefore, that, giving to the testimony every reasonable intendment in favor of defendant, it falls utterly short of establishing title under the statute of limitations, as laid down by the court in its instructions, and that the district court erred in refusing to set aside the verdict for this reason.

The claim of defendant, on any other theory than that of naked, adverse possession for ten years, cannot stand for a moment. When based on the use of the word "drainage," as used in the deed, it is untenable; for that word was evidently used simply to designate the general locality, whereas the ract was described by side lines as well as end lines "in the drainage." Even if there were no side lines defined, the claim would be wholly inconsistent with the "drainage" idea, as well as inconsistent in itself. It could be only one of two things: either to include the land drained by the water courses that enter the Vermejo between the end lines, or the drainage slopes included between the end lines projected on either side to the watershed. *It cannot be both of these.* Yet defendant resorts to the first theory in order to take in the lands of Rail and Coal cañons, which empty between the end lines, and to the second in order to secure the head of Saltpeter, which empties four miles below Dawson's lower line.

The court below in its opinion treats the word "drain-

age" in the deed as confirmatory of defendant's claim, and refers to the law of riparian ownership as one to be considered "in construing the language in these deeds." We respectfully submit that this law has to do with the right to water, and not to land; and can throw no possible light on this question. The opinion states that "Dawson spoke to Maxwell in regard to where the drainage would place the line around the tract of land he was to get, and therefore he must be understood to have known that Dawson was claiming such a line as the drainage would give him, and if such were the case that understanding or agreement would fix the boundary line of the deed." That is to say, a supposed statement by the vendee alone is to be erected into a parol agreement, to control the terms of a subsequent deed covering the same subject matter. And even this is based on a misunderstanding of the record, for there is no evidence of any such conversation with Maxwell as that above quoted from the opinion of the court.

II.

The Court erred in excluding the deeds offered in evidence by plaintiff, showing conveyances by Maxwell to Maulding, Miller and Curtis, on the Vermejo, in January, 1869. (Rec. p. 424.) These deeds formed no part of plaintiff's chain of title, and were not, therefore, under its control. No proof as to the whereabouts of the originals was necessary as a foundation for the introduction of copies from the records. We offered the certified copies, and they

were clearly admissible under section 2768 of the Compiled Laws of New Mexico as construed by this Court in *Probst vs. Presbytertan Church*, 129 U. S., 187.

Mr. Dawson was permitted to give hearsay testimony, over objection, concerning a contract which Maulding and Curtis had with Maxwell for land on the Vermejo, of which his purchase was said to be a part. (Rec. p. 298–302.) We offered the deeds for the purpose, in part, of showing what their purchase actually was; and we submit that this was perfectly relevant in rebuttal, and that plaintiff was greatly prejudiced by the ruling of the Court excluding them.

These deeds were also relevant for the purpose of showing other lands conveyed by Maxwell, which would satisfy the reservation of 15,000 acres contained in plaintiff's title deeds, which will be referred to hereafter. The court below erroneously assumes that any error which the District Court may have committed in excluding the deeds was cured by an admission, whereby, as with many other voluminous documents introduced on the trial, the substantial contents of the deeds were stated instead of inserting them at large, in order to avoid encumbering the record with unnecessary matter; and the Court says in its opinion that plaintiff had the benefit of the contents of the deeds. This is a complete misconception of the record. The deeds, containing in substance the matters stated in the admission, were *excluded* by the trial court, and plaintiff was not permitted to use them or their contents on the trial. The admission as to what they contained, was simply for the purpose of enabling the appellate court to pass upon their relevancy, in reviewing the ruling of the lower court excluding them.

III.

A large amount of hearsay testimony was offered on the part of defendant, and admitted over plaintiff's objection and exception. The particular portions excepted to are set forth in the third assignment of errors. Without here repeating them at length, it is sufficient to say that this testimony may all be resolved into two classes, viz:

1. Testimony of Dawson as to a parol contract of Maulding, Miller and Curtis with Maxwell, for the purchase of a tract of land including that in controversy, the terms of which he derives from verbal statements of Maulding and Curtis to him.

The court below held that there was no error in the admission of this testimony, because under the civil law land could be conveyed by parol sale, accompanied by delivery of possession; and that it is immaterial whether the testimony as to the statements of Maulding and Curtis was properly admitted or not, because Dawson "had conversations with Maxwell, the party from whom they claimed to have purchased, and that Maxwell pointed out the land," and also "told him what amount of land he would receive under his agreement with Maulding, Miller and Curtis." This recital of the testimony touching conversation with Maxwell is both misleading and incorrect. The only pointing out of the land by Maxwell testified to is where Dawson, in answer to a question if there was ever any pointing out of the boundaries by him and Maxwell, says there was, and that "the boundaries were what you read in that description there." (Rec. p. 246.) Upon cross-examination, it appears that this pointing out of boundaries took place at a stage station four miles distant from the property, and

that "Maxwell didn't come upon the ground and point out the different localities." (Rec. p. 285.) There is no evidence in the record that Maxwell told Dawson "what amount of land he would receive," either "under his agreement with Maulding, Miller and Curtis," or otherwise.

Conveyance of land at that time (1868) did not depend upon civil law principles, but was fully regulated by a statute, enacted January 12, 1852, and found in the Compiled Laws of New Mexico, 1884, beginning at section 2748, which established a complete system of conveyance and registration, by written deed, acknowledgment and record.

Even if the law were as stated by the court below, it required delivery of possession, of which there is not the slightest competent or intelligible proof. There is evidence that Maulding and Curtis "*claimed* to be in possession" of the tract of land, but none whatever of the fact. The conversation of Dawson with Maxwell does not give any intelligible account of a contract with Maulding and Curtis, nor furnish the slightest information as to what such contract was. As to the fact and terms of any contract of Maxwell with Maulding and Curtis, would there be any evidence which anybody could understand, if the oral statements of Maulding and Curtis were left out? None whatever; and when tested by this question the error in the ruling becomes plain. If it were true that land could be conveyed by a verbal contract, *the contract must be proved by competent testimony*. But here it is permitted to be proved by hearsay of the most flagrant kind. Furthermore, this supposed parol contract thus permitted to be proved by the unsworn statements of a third party, in his own interest, reproduced after a lapse of twenty-four years by the recollection of the most interested witness, was only an

executory contract at best. Not only so; but this supposed agreement under which these parties took possession seems to have been contained in a written instrument or bond for deed (Rec. p. 212) which was not produced, and whose contents, for want of proper foundation, were not permitted to be proved. The only proof that such agreement was carried into execution is in the deed of Maxwell to Dawson, made the following year, which is in evidence. The deeds of Maxwell to Maulding, Miller and Curtis, which would have been the best possible proof of what the contract actually was, were excluded; and the court below is in the singular position of admitting proof of a supposed parol contract for sale of land by hearsay testimony only, and excluding the written and record evidence of the contract as actually executed.

The Territorial Supreme Court sanctions the admission of this hearsay testimony, for the reason that "Dawson had conversations with Maxwell, etc." It seems to be its opinion that there is no error in admitting a mass of incompetent testimony to supply lacking proof of a fact relied upon, provided there is some other evidence pointing vaguely towards it. It would be difficult to find, outside of the opinion in this case, any authority for this novel doctrine. We maintain with confidence that the ruling of the trial court admitting this testimony cannot be justified by any known rule of evidence.

2. Testimony by various witnesses of oral statements of strangers to the title, as to the fact and extent of Dawson's *ownership* of the land.

Facts showing the use and occupation of the land by Dawson, or the continuity or notoriety of his possession, are entirely relevant to establish his defense of adverse possession under the statute of limitations. But to allow

witness after witness to come before the jury, and rehearse what they had heard people in the neighborhood say about this tract of land, as "belonging to Dawson," as "Dawson's property," &c., when the question at issue is one of boundaries and extent, and it is evident that the matter of boundaries was not under discussion in these conversations, is simply to mislead and prejudice the jury, and invite them to find a verdict upon irrelevant neighborhood gossip, in lieu of the necessary facts. This was a cattle country, where cattle grazed upon the open range without enclosures. Each man's ranch, and the adjacent country, was called his range, and so recognized by the neighbors without any reference to the question of actual ownership. Such claims of range were recognized equally on public land; and in fact during much of the time in question this very region was considered by the people generally to be public land. Dawson had a well known and valuable ranch, well improved, within the tract admitted to have been acquired by him from Maxwell; and every one of the conversations of neighbors, admitted in evidence with regard to Dawson's "ownership," might have occurred with sole reference to that fact, and without any reference to a disputed question as to the extent of Dawson's land.

The vice of these two classes of hearsay testimony is that the jury were improperly influenced and misled by it. If Dawson actually occupied this land for ten years before the suit, openly, exclusively, continuously and adversely, proof of that *fact* will establish his defense. But a court has no right to permit the attempted proof of it to be bolstered up and supplemented by improper evidence of this character, to strengthen its weak points and supply its defects.

IV.

In the first and second instructions given by the Court at the request of defendant (Rec. p. 457), the jury were told that the burden of proof was on the plaintiff to show that the land in controversy was not a part of an area of 15,000 acres, excepted in the conveyance of the Beaubien and Miranda grant to the plaintiff, and that unless plaintiff had proved that the lands in controversy were not excepted from the deeds of conveyance to it, plaintiff could not recover.

The Court will find the exception on which this instruction is based at folio 75. It is as follows:

"Excepting and reserving from the operation of this conveyance, such tracts of land, hereby warranted not to exceed in the aggregate 15,000 acres, as had been sold and conveyed by Lucian B. Maxwell, by deeds duly recorded, on or prior to January 25, 1869."

The purpose of this exception was evidently to protect the grantor from an action for breach of warranty. For any other purpose it would be meaningless. If Maxwell, previous to his deed of April 30th, 1870, had conveyed 15,000 acres of land to other parties, such deed could not operate upon those lands, and they were effectually reserved by the mere fact of previous conveyance, without any declaration to that effect. If defendant held under any of these previous conveyances, he would have a perfect defense to that extent, but it would be a matter of defense purely, easily susceptible of affirmative proof. The instruction complained of required the plaintiff to prove the negative. We are aware that it has been held in certain cases that such proof was incumbent on the plaintiff, on

the ground that he must recover on the strength of his own title. But it seems to us that the rule cannot be applied to cases like this, and must yield to circumstances and the necessity of the case. It would require the plaintiff to prove that a tract of land of at least 20,000 acres is not embraced within an exception of 15,000 acres. The only way this impossibility could have been attempted, would be to offer the deeds of Maxwell to other parties prior to January 25th, 1869, and show what lands they conveyed. This would introduce a collateral issue which might divert the whole trial from the real question. To establish what lands were conveyed to other parties, by deeds which mentioned no area, might necessitate an investigation as complicated and difficult as the main issue in the case. Nevertheless we attempted to make this very proof, by offering in evidence the deeds of Maxwell to Maulding, Miller and Curtis, made January 7th, 1869, (Rec. p. 424,) and they were objected to by defendant, and excluded by the court.

This instruction amounts to a direction to the jury to find for defendant on account of the lack of the very proof which the Court had excluded. It seems to us that the judgment must be reversed on this point alone. If the instruction is correct, then the evidence offered was material and relevant, and it was error to exclude it. If the evidence was irrelevant and properly excluded, then the instruction was erroneous.

V.

The theory upon which the court instructed the jury, as exhibited by the instructions excepted to, and set forth in the fifth and sixth assignments of error, was that under the New Mexico statute of limitations a ten years' adverse possession divests the title of the owner, and confers it upon the possessor, without reference to color of title. Such, we submit, is not the effect of the statute. The law is found in two sections, 1880 and 1881, of the Compiled Laws of 1884, which are copied in full in the Court's charge. (Rec. pp. 445–447.) By the first of these, any person holding adverse possession for ten years, *by virtue of a deed*, or other assurance *purporting to convey an estate* in fee simple, shall by such possession have "a good and indefeasible title in fee simple." To gain the benefit of this section, the adverse claimant must have an apparent paper title. The other section requires no paper title, but at the same time does not provide that the ten years' possession shall ripen into a title. It only bars the action, if not brought within ten years after the cause accrues. The trial court failed to distinguish between these two sections, but adopted the theory contended for by defendant, that the first ten years alleged possession gave him a perfect title, in order to avoid the effect of the evidence showing the want of continuity and exclusiveness in his possession during the last ten years. Dawson does not claim under any deed, but relies on naked possession alone. These instructions enabled the jury to limit the inquiry as to adverse possession to the period 1868–1878, and to disregard

the whole time from 1878 on;—it being immaterial on this theory whether defendant had any possession at all after the first ten years. Part of plaintiff's proof tending to show the want of possession by Dawson applied to the ten years next before the suit was brought, during which plaintiff's constructive possession, if ever interrupted, was restored; but by these instructions plaintiff was completely deprived of the benefit thereof, to which it was entitled under section 1881, and the jury were authorized to find for defendant without the slightest reference to it.

Sedgwick & Wait on Trial of Title, § 745 *et seq.*
753.

VI.

The attitude of the defendant in this case is not one which will commend itself to a court of justice. It is apparent from the whole record that he never thought of claiming except under his deed, until the defense to this action was prepared. The deed was recorded; he accepted it; retained it; showed it to his son to indicate his claim; exhibited it to the engineer of plaintiff's grantor when he came to survey his boundaries. The record of the deed was, under section 431 of the Compiled Laws of New Mexico, 1884, "sufficient notice to the public" of its contents; and was calculated to deceive the subsequent purchasers from Maxwell, and put them completely off their guard as to any further claim by Dawson. Especially was this true, when the nature of the country and customs of the cattle business are considered. This tract of land now

claimed by Dawson is one of high, steep bluffs, ridges, mesas and mountains, many of them inaccessible by vehicles, cut by deep ravines and rocky cañons, and, with the exception of a few small strips in the valleys and cañons, is covered with timber and rocks. (Rec. pp. 42–48.) Parts of it are not even good for grazing. The chief value of much of the land outside the valleys is for the coal which underlies it. (Rec. pp. 425–427.) Property of this kind might be used for ranging live stock according to the prevalent custom throughout that region, without ever exciting suspicion in the mind of the true owner of any adverse claim beyond that shown by the recorded deed. Having accepted the deed, held under it and given no notice to Maxwell's vendee of his intention to repudiate it, or claim beyond it, good faith requires that he should be bound by its recitals.

For a full discussion of these general aspects of the case as presented by the record, from an impartial source, we refer the Court to the dissenting opinion of Freeman, J., which is found in the record along with the opinion of the court.

Respectfully submitted,

FRANK SPRINGER,

Counsel for Plaintiff in Error.

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IN THE

Supreme Court of the United States,

October Term, 1893.

TERM No. 1065.

THE MAXWELL LAND GRANT CO.,
Plaintiff in Error,
vs.
JOHN B. DAWSON,
Defendant in Error.

In Error to the Supreme Court of the Territory of New Mexico.

Brief for Defendant in Error.

ANDRIEUS A. JONES,
Counsel for Defendant in Error.

CARRUTH PRINTER AND BINDER EAST LAS VEGAS

IN THE

Supreme Court of the United States,

October Term, 1893.

TERM No. 1065.

THE MAXWELL LAND GRANT CO., *Plaintiff in Error,* vs. JOHN B. DAWSON, *Defendant in Error.*	In Error to the Supreme Court of the Territory of New Mexico.

Brief for Defendant in Error.

This is an action of ejectment brought by the plaintiff to recover of the defendant the possession of the entire tract of land known as the Beaubien and Miranda or Maxwell Grant, containing 1,714,000 acres. Defendant in his additional plea disclaims as to all the land described in the declaration, except a certain tract described in his additional plea, (Rec. p. 4,)* as to which he pleads not guilty.

*The references to the Record throughout this brief are to the original paging, found on the margin of the printed record.

and in his third and fourth pleas takes defense as to this tract under the statute of limitations. This plea of not guilty, under the statute of New Mexico, puts in issue all questions which relate to the right of the plaintiff to recover possession of the land in controversy. (Com. Laws N. M. 1884, sec. 2262.)

Plaintiff by its replication to these pleas (Rec. pp. 7–8) joined issue except as to a certain part of the land claimed by defendant, which part it admits to be the property of the defendant.

The case was tried by a jury and a general verdict of not guilty returned, upon which final judgment was entered. The case was then removed to the Supreme Court of New Mexico for review upon the following assignment of errors.

1. In denying the plaintiff's motion for a new trial.

2. In excluding the deeds of Lucian B. Maxwell and wife to Miller, Maulding and Curtis for lands on the Vermejo, offered in evidence by plaintiff.

3. In giving to the jury instructions Nos. 1 and 2, requested by defendant. (Rec. p. 457.)

4. In admitting the testimony of John B. Dawson as to the oral statements of Maulding and Curtis, touching their purchase (Rec. p. 301), and of other parties touching Dawson's ownership of the land in question. (Rec. pp. 68, 74, 76, 93.

5. In giving instructions Nos. 3, 4, 5, 6, 7 and 8, requested by defendant. (Rec pp. 458–459.)

6. In admitting the testimony of witnesses against plaintiff's objection; all shown by the bill of exceptions.

7. In excluding the testimony offered by plaintiff and ruled out by the court as shown by the bill of exceptions.

The first assignment of error presented nothing for the appellate court to review. The granting or refusal of a motion for a new trial is a matter to be left entirely to the discretion of the trial court, and its action on such motion cannot be assigned as error.

This is the rule at common law, and has been adopted by the United States courts and all state courts where the statute has not made a different provision.

16 Am. & Eng. Enc. of Law, p. 680, and authorities there cited.

The statutes of New Mexico (Sec. 1823, Comp. Laws, 1884), provide "In all the courts in this territory the common law as recognized in the United States of America shall be the rule of practice and decision." There is no statute in New Mexico which authorizes an appeal from orders granting or denying new trials.

The 2d and 7th assignments of error each raised the same question. There was no evidence offered by the plaintiff and excluded by the court except that referred to in the second assignment of error.

The testimony referred to in the 6th assignment of error as having been admitted over plaintiff's objection, undoubtedly refers to the admission of testimony particularly specified in the 4th assignment of error.

The 3d and 5th assignments of error relate only to the giving of instructions requested by the defendant.

The exception taken by plaintiff to these instructions upon the trial is as follows:

"I will take an exception to each and every instruction asked for by the defendant and given by the Court.

"We except to instructions Nos. 4, 5, 6 and 7, given by the Court on its own motion; and to instuctions Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 given by the Court at the request of the defendant."

In the case of McBroom vs. The Scottish Mortgage and Land Investment Co. of New Mexico (Limited), Term No. 1028, now pending in this Court, counsel for plaintiff in error in this case, who is also counsel for plaintiff in error in that case, took the position that this Court would not consider the instructions excepted to in that case because the exception was of a general character, and quoted a number of United States cases as authority for his position. As I stated in the brief and argument filed for the defendant in error in that case, I do not believe that the position taken by him can stand, for the reason that those cases cited by him were decided upon a rule of the Supreme Court of the United States which I do not believe was applicable to cases arising in the Territory of New Mexico. But if his position in that case should be found well taken, then I insist that the general exception to the giving of instructions by the Court in this case was not sufficient to raise for review any of the questions therein referred to, and that the same rule shall obtain in this case. The cases cited by counsel for plaintiff in the McBroom case nearly all hold that at the time of taking the exception that counsel must point out the questions of law to which he takes the exception so that the trial court may know the particular question of law to which exception is taken. If that rule is to obtain in New Mexico, then it is evident that the exceptions in this case were entirely inadequate. No

propositions of law were stated in the exception, and I insist that the exception as taken amounts to nothing more than a mere general exception to the instructions.

The assignment of errors filed in this court is substantially the same as that filed in the Supreme Court of the Territory of New Mexico, except that counsel for plaintiff in error now assigns the giving of certain instructions by the court on its own motion as error, whereas, there was no assignment of error in the Supreme Court of the Territory which covered such instructions. This appears in the sixth assignment of error filed in this court.

It must be apparent that this court will not consider any questions that were not raised in the Supreme Court of the Territory of New Mexico; that the judgment of the Supreme Court of the Territory must be reversed or affirmed upon the case made before it. If this position is correct then the sixth assignment of error filed here should not be considered. If it be held that the exception to the instructions asked for by the defendant and given by the court was sufficient, then the only questions to be considered by this court are:

First. Did the trial court err in excluding the deeds of Maxwell and wife mentioned in the second assignment of error?

Second. Did the court err in admitting the testimony set out in the third assignment of error?

Third. Did the court err in giving the instructions in the fourth assignment of error?

Fourth. Did the court err in giving the instructions specified in the fifth assignment of error?

In the brief for plaintiff in error there is a long statement of the testimony and conclusions derived therefrom, intermingled with argument, wherein it is claimed that the defendant did not prove title to any of the land in controversey by adverse possession. There is nothing in the assignment of errors which raises the question as to whether or not all the acts done by the defendant and proven upon the trial were sufficient to constitute adverse possession; but, if such a point had been raised, it is not one for the consideration of an appellate court. The authorities are abundant to the effect that the questions as to what acts are necessary to constitute adverse possession to any particular parcel of land, are within the peculiar province of the jury. This court has so decided in the case of *Ewing vs. Burnett*, 11 Peters, 53, wherein the following language is used:

"Neither actual occupation, cultivation or residence, are necessary to constitute actual possession (6 Pet., 513) when the property is so situated as not to admit of any permanent useful improvement; and the continued claim of the party has been evidenced by public acts of ownership, such as he would exercise over property which he claimed in his own right, and would not exercise over property which he did not claim. Whether this was the situation of the lot in question, or such was the nature of the acts done, *was the peculiar province of the jury.*"

This proposition does not seem to have been disputed at any time by counsel for plaintiff in error. On the trial of the case the court at the request of the plaintiff (Rec. p. 454) instructed the jury as follows:

"To constitute such a possession as will bar the title of the owner under the statute of limitations, it must be hostile, visible, notorious, continuous and exclusive, for a period of at least ten consecutive years before the commencement of the suit. What acts will constitute actual

possession, sufficient in law to bar the title of the owner, depends largely upon the circumstances of the case, and the nature and character of the property; and *it is a question for the jury to determine from the evidence.*"

The trial court fully instructed the jury as to what acts were necessary to constitute adverse possession and the jury by returning a verdict of not guilty must have found all the necessary facts to exist. I submit therefore that the argument of counsel for plaintiff in error as set forth on pages 10, 11, 12, 13, 14, 15, 16 and down to division two on page 17 of his argument is not pertinent to any question which was properly before the Supreme Court of the Territory, or which is properly before this court—for the reason (1st) that the question presented is not one which can be raised before an appellate court, and (2nd) because the question has not been raised by any proper assignment of error.

I would dismiss the first division of the argument by plaintiff in error with what has been said, were it not that the same contains a number of statements which are exceedingly objectionable, and which I believe can be shown not to be warranted by the record.

The statements of counsel for plaintiff in error in regard to the deed which John B. Dawson had from Maxwell, and the land included in the deed, are particularly objectionable. The description of the land contained in the deed is as follows:

"All the land or ground now suitable for farming or cultivating purposes in the valley or drainage of the Vermejo river, county of Mora, Territory of New Mexico, within the following boundaries, to-wit:

"Beginning at a dam at the head of a certain ditch at the right hand point of rocks, from thence running down on the north side of said river to a certain other pile of rocks, on a knoll or elevation, with some bushes near thereto;

thence running very near southward across said river to a piñon tree to the right of a ridge, near a wash, which tree is marked with the letter 'L;' thence running up said river on the south side to the place of beginning; containing about ——— acres, more or less."

Counsel for plaintiff in error on page 11 of his brief states that the tract of land corresponding substantially to the description in this deed is shown upon the map attached to the record. By this statement I assume that he intends to say that the small piece of land designated on the map as the land admitted to be the defendant's is substantially the land described by defendant's deed. It will be observed, however, from a reading of the description in the deed that only three points are called for. The first one is at the *dam*, the second one is at the pile of rocks, and the third is at a piñon tree marked with the letter "L." There is no testimony which shows where the pile of rocks referred to in the deed was located, but if it were located at the east end of the stone wall indicated on the map, and if the side lines are to be considered straight lines, then the piece of land described in the deed would be triangular in form and would not include a good portion of the tract which plaintiff now admits to belong to the defendant. It further appears that if the side lines were intended as straight lines, that the land described in the deed could not be located on the surface of the earth. If a straight line is drawn from the dam to the east end of the stone wall, it cannot be kept on the north side of the river as required by the description in the deed. The testimony does not show any such point of rocks to be on the surface of the earth, as plaintiff has designated on the map as the northeast corner of the land admitted to be the defendant's. The only prominent point of rocks testified to by witnesses is

that which appears on the map about a half inch above the northeast corner of the tract admitted to belong to the defendant; and, if that point of rocks which is mentioned in the deed is to be considered the starting point, then a straight line could not be run from the west end of the stone wall, where it is supposed the piñon tree with the letter "L" marked on it was situated, to the point of rocks and keep on the south side of the river. The tract of land which the defendant claimed to be conveyed by the deed is clearly indicated on the map filed with the record in this case, and is accurately described in defendant's pleas. Of this description counsel for plaintiff in error takes occasion to say, page 14 of his brief:

"The beautiful definition of boundaries exhibited in the pleas of defendant and the map made to fit them, is manifestly the product of the acute and accurate mind of defendant's counsel, and was never thought of until after this suit was brought."

And on page 12 of his brief he undertakes to place the defendant in the attitude of having claimed for over twenty years only the tract now admitted to be his. It is there said:

"But now, after a lapse of over twenty years, abandoning and repudiating the deed, and setting up a title by adverse possession alone to a very much larger tract, extending far beyond the boundaries described in the deed."

The last statement is the "unkindest cut of all." The evidence clearly shows that Maxwell had contracted to convey to Curtis, Maulding and Miller, the land extending from the dam on Dawson's place down to the lower line of the O'Donnell farm, together with all the drainage of the Vermejo between these points, being the entire tract of land designated on the map filed with the record; that after

this contract was made it was agreed between these people that the defendant in this case should have the "upper part," and that the entire tract of land shown on the map was divided between the parties interested in the purchase long before any deed was ever given to either of them, and that the line on which the stone wall is now located was the southern boundary line of the defendant's tract. The defendant paid $3,700 for his land in May 1868, but the deed was not executed until January 7th, 1869. The defendant took actual possession of the whole of his piece of land—the identical land described in his pleas—in the spring of 1868, by putting a tenant in charge of it, by placing cattle upon it and by going upon it himself and making it his home. It is shown by the testimony of at least three witnesses, that before the deed was ever executed, Lucien B. Maxwell, who was then the owner of the entire grant of land now claimed by the plaintiff, knew that the identical land which is now claimed by the defendant was then in defendant's actual possession. After the deed was executed and mailed to the defendant, it was explained to him that the letter "L" on the piñon tree was placed there for the purpose of indicating his southern boundary line; that the word "drainage" in his deed, included the tract of land which he had entered upon, which he was then occupying, and for which he had paid $3,700.

In 1871, Mr. Morley, the chief engineer and surveyor for the Maxwell Land Grant and Railway Co., who then owned the Maxwell grant, went to Mr. Dawson for the purpose of ascertaining what he claimed. Mr. Dawson told him exactly what he claimed; he told him that he claimed the identical land which is now described in his pleas in this case. (Rec. p. 203.) It also appears from

the testimony that he not only told Morley that he claimed the land which he now claims, but that he told the same thing to a number of others, and from the first time when he looked at his deed, he believed that it covered the entire tract of land which he now claims, and he still believes that it does.

Defendant, in his testimony, states that he and Lucien B. Maxwell were "frontiersmen" in those days. This, to any man living in this western country, is very significant. In 1868, among those men, a man's word was as good as his bond. The defendant, knowing the then owner of the Maxwell Land Grant as well as he did, had no reason to feel disturbed by any vagueness in his deed; and, it is reasonable to presume, that if Lucien B. Maxwell were alive to-day the defendant in this case would never have been brought into court by the plaintiff in error. The defendant in this case has never abandoned or repudiated the deed, and on pages 300 and 303 of the record, fully explains why and how he believes the description in his deed covers the tract of land which he now claims and which he has claimed since the spring of 1868.

Counsel for defendant is alone responsible for not introducing the deed in evidence for the defendant, and the reason why it was not so introduced was because counsel was satisfied that the defendant had a good title to all the land by adverse possession and did not desire to be hampered by any possible contention of counsel for plaintiff that the deed did not cover all the land claimed by the defendant, and that defendant was therefore estopped from claiming any land outside of that described in his deed. So, then, the defendant in error cannot be accused of acting in bad faith on the trial of this case or at any other

time. But in the light of the evidence, *can such be said of the plaintiff in error?*

It appears from the evidence of Harry Whigahm, the land agent of the plaintiff (Rec. p. 314), that Mr. Morley in 1871 made a map of what he considered to be the land belonging to the defendant, and that this map has been in the office of the plaintiff and its grantor until the present time. It is also shown by this testimony (page 318) and the testimony of plaintiff's engineer (page 330) that the Morley survey was not confined to the immediate valley of the Vermejo, but that it extended up the cañons on either side; and included "considerable bench land, lower slopes of the mesas," and "some rock ledges," (Rec. p. 334); and it appears that the survey up Rail cañnon extended to a point about half a mile *north of the dam*, and that the survey extended north up Coal cañon not quite as far. So, then, since 1871, this map has been hanging on the company's wall as a constant reminder that its own engineer interpreted the description in the defendant's deed to embrace land in the cañons; that the side lines called for in the deed were not intended to be straight lines, and that the defendant was entitled to the lands extending for long distances up these different cañons. Notwithstanding the knowledge which this map conveyed has been accessible to the plaintiff and its grantor for more than twenty years, the defendant in this case has been permitted, during all this time, to use and occupy, peaceably and undisturbed, the entire tract of land described in his pleas, but, valuable coal beds having recently been discovered on this tract of land, now, after the lapse of more than twenty years, in the old age of the defendant, the plaintiff seeks to eject defendant from the land which he has protected from hostile

Indians and occupied and enjoyed for a quarter of a century.

Instead, therefore, of accusing the defendant of now trumping up a claim which he never asserted before, and attributing the beautiful definition of defendant's boundaries to the acute and accurate mind of counsel for defendant, would it not better be asked who framed the description of the land now admitted to be that of the defendant? Was not it entirely and without any foundation therefor, the product of some acute mind which could read into a deed something never intended to be there?

There are numerous other statements in the brief of counsel for plaintiff in error which are objectionable, and which tend to show that the acts of the defendant have not been such as to constitute adverse possession. The testimony, however, clearly shows that the defendant in the spring of 1868 paid $3,700 for his tract of land, in good faith claimed it as his own and placed a number of animals upon it, in charge of a tenant who was instructed to keep these animals upon the tract of land which is now claimed.

In the early autumn of 1868, defendant, Dawson, himself went upon the land in controversy, established his home there and took a number of other animals to be kept upon the property in question; and, from the time of first taking possession of the land in controversy, in 1868, until the present time, he has always had animals upon this land ranging all over the particular tract of land in controversy. (Testimony of various witnesses.) From the time of first taking possession until the year 1880 he maintained exclusive possession of this property by keeping his own animals within the boundaries of his land and excluding the animals of other people therefrom. For this purpose he kept

men employed. (Rec. pp. 74, 74, 126, 166, 167 and testimony of all witnesses.) The reason why Dawson was able to maintain exclusive possession of all the land in controversy during the twelve years prior to 1880, and why he was not able to keep his stock so closely upon the land, or to keep all the stock of other people off the land so well after the year 1880 is fully explained by the testimony. (Rec. pp. 166–67.)

The boundaries of his land were well defined upon the earth's surface by ridges around the exterior boundaries, except on the south, and by a stone wall across a portion of his southern boundary, indicating his southern boundary line. (Rec. pp. 37, 174, 177.) It was generally understood by the people in that vicinity that Dawson claimed the drainage of the Vermejo within the boundaries designated, being the land described in his additional plea; and, as to the certainty of this claim, I refer especially to the testimony of Marion Littrell, a witness for the plaintiff in this case, and an employé of the plaintiff, who was at the time of the commencement of this suit and at the time of the trial, and for many years prior thereto, the range superintendent of the plaintiff company.

He was asked by counsel for plaintiff (Rec. p. 414) whether it was generally understood what his (Dawson's) boundaries were as he claimed them.

A. "Well, only in this way. It was generally understood that he claimed the drainage, and everybody knows what that was, you know."

Counsel for plaintiff in error claims that defendant, Dawson, could only have claimed title to the land in question upon one or two distinct theories mentioned in his brief. This is an erroneous contention. He did not claim

it upon either of the theories set forth in the brief for plaintiff in error. He claimed the land because it was a part of the entire tract which Maxwell had contracted to convey to Miller, Maulding and Curtis, and that his southern boundary line was established for the purpose of dividing this tract between the parties interested in the contract with Maxwell. This southern boundary line was established long before any deed from Maxwell was executed (Rec. pp. 216, 230), and Dawson, from the time of first taking possession of the land until the present, has always claimed the land described in his pleas. Whether he claimed it under his deed or not, his claim, nevertheless, to this tract of land as described always existed. The jury under proper instructions found that he claimed the identical tract described in his plea and it is now immaterial on what theory the claim was based.

Counsel for plaintiff in error insists that the claim of Dawson was under his deed, and that under no construction of the deed can it be made to cover the land in question. Upon an examination of the testimony in regard to the description contained in the deed, it will be found clearly established that the land described in the deed, if the side lines were intended to be straight, could not be located upon the ground; that Dawson always understood that the points mentioned in the deed designating his lower boundary were simply division points upon the river to divide the tract of land described in the contract with Maxwell between the parties interested therein; and that the word "drainage" in his deed, which the court below construed an indefinite expression, rendering explanatory proof as to its meaning admissible, was intended to cover all of the land described in his plea. There is no proof that

Dawson was in error in this construction of his deed, but if his construction was erroneous, it would not in law invalidate his claim to the entire tract of land, by adverse possession.

In the 1st American and English Encyclopedia of Law, page 281, I find this general statement of law:

"Land which is held in good faith under a mistake as to descriptions or informality in the execution of the deed will be held adversely, and a title will be acquired by limitation."

And in Tyler on Ejectment and Adverse Enjoyment, at page 905, the doctrine is thus announced:

"The question has frequently been before the courts as to whether a party can set up an adverse possession to lands occupied by him under a mistake, supposing the same to belong to him, when in point of fact they are outside of his real claim; and the doctrine of the courts evidently is, that where a grantee, in taking possession under his deed, goes unintentionally and by mistake beyond his proper boundaries, and enters upon and actually occupies and improves lands not included in the deed, claiming and supposing it to be his, this occupation is to be deemed adverse within the meaning of the statute of limitations, and if continued the requisite length of time, will bar the right of the true owner."

And the same author says on page 906:

"And the general doctrine of the courts upon the subject is, undoubtedly, in accordance with the rule above stated."

The Court of Appeals of the State of New York, in the case of *Crary vs. Goodman*, reported in 22nd New York, page 174, in discussing this same doctrine, uses the following language:

"There is, so far as I am aware, no decision nor any intimation to the contrary in any judicial opinion."

If this is the law where one enters under a deed defec-

tive in the description of the land, the possession of one who enters on land for which he had paid before any deed was given would certainly be adverse.

There are some cases decided, which upon a mere casual examination would appear to be otherwise, but I believe upon an examination of all these cases they will be found in accordance with the doctrine above announced. The Supreme Court of the United States in the case of *Probst vs. The Presbyterian Church*, 129 U. S., page 191, uses the following language:

"This is a claim adverse to everybody else, and the possession is adverse when it is held under this claim of ownership, whether that ownership depends upon a written instrument, inheritance, a deed, *or even an instrument which may not convey all the lands in controversy.*"

This decision of the Supreme Court of the United States was rendered in a case which went up from the Territory of New Mexico, and involved the construction of the same law which is to govern the case at bar.

Counsel for plaintiff in error also contends that the plaintiff had a right to rely upon the description in the deed as describing the land which the defendant claimed, and that the various acts of Dawson prevented plaintiff from knowing the extent of his claim. In answer to this statement, it is only necessary to say that the description of the land in the deed and the testimony of the witnesses clearly show that no one who knew anything about the country in that locality could reasonably conclude that the deed conveyed only a small tract of land in the immediate valley of the Vermejo. It is evident that the plaintiff company and its grantor did not so conclude, as there was in the office of both companies, during all the years from 1871, a map of

a survey of Dawson's tract of land, made by the chief engineer of the Maxwell Land Grant and Railway Company, which contained lands outside of the immediate valley of the Vermejo, and extending into the cañons on both sides of the river. The expression in Dawson's deed, "Lands suitable for farming purposes," according to the definitions in Webster's dictionary, includes lands suitable for the raising and rearing of live stock; and there is nothing in the testimony to show that the deed did not embrace the entire tract of land in controversy in this case. Furthermore, Maxwell, during the time he owned the Maxwell land grant, had actual notice of the claim of Dawson. The Maxwell Land Grant and Railway Company, which owned the land grant from 1870 to 1880, also had actual notice, as Dawson, in 1871, explained to W. R. Morley, who went upon the land for the purpose of ascertaining the extent of Dawson's claim, just what land was claimed; and in this case it is entirely immaterial whether any one claiming to own the Maxwell land grant after the year 1879, had any actual notice of Dawson's claim or not, as Dawson had acquired title by limitation prior to that time At the time of the purchase by plaintiff in this case, Dawson was in possession of the tract of land, and plaintiff was bound by any information which it could have obtained upon due inquiry of Dawson, who was in possession of the land at the time of such purchase.

Upon all the foregoing facts, which it is believed are clearly established by the testimony in this case, it seems that a stronger case of adverse possession of land was never made out in any court. All of the elements which were required to constitute adverse possession were clearly and fully proven, and there was no positive testimony to the

contrary, except it be some statements of one witness, Mr. Hunt, whose testimony was in conflict only upon minor points which were clearly proven by a great preponderance of testimony. This testimony of Mr. Hunt, as well as the testimony of all the other witnesses for plaintiff, related principally to the character of Dawson's possession after 1879 or 1880; and under the decision of this court in case of *Probst vs. Presbyterian Church, supra*, Dawson had acquired title to the land in contoversy prior to 1879, and the character of his possession after that time was immaterial.

There is nothing in the testimony to show the number of acres of land which plaintiff admits to be that of Dawson, or which is claimed by defendant; but it is believed by counsel for defendant upon a careful examination of the plat in connection with the evidence, that the amount so conceded to be Dawson's is not more than three or four hundred acres, and it is preposterous to presume that Dawson, or Maxwell ever believed or intended that Dawson should only get this small tract of land in the valley. It is shown by the testimony that Dawson paid more for the tract of land which he purchased than Maxwell at the same time was paying for one-twelfth interests in the entire grant, each of such interests in the grant amounting to about one hundred and fifty thousand (150,000) acres. (Rec. pp. 14–15.)

I.

Did the court err in excluding the deeds offered in evidence by plaintiff showing conveyances by Maxwell to Miller, Maulding and Curtis? (Rec. p. 424.)

It is claimed by counsel for plaintiff in error that the deeds were offered in part for showing what the contract for purchase given to Curtis and Maulding was, and for the purpose of showing that the land in controversy was not a part of the land excepted from the deeds under which plaintiff claimed title to the grant. As to the first purpose for which it is now said they were offered, the introduction of the deeds would have been entirely irrelevant. Dawson was not permitted to testify on direct examination anything in regard to the contract between Maxwell, Curtis and Maulding, but upon cross-examination by Mr. Catron, statements were made in regard to the contract and deed and Dawson was questioned at great length as to the situation of the "Van Bremmer" cañon. The Van Bremmer cañon was situated west of the land indicated on the map and the water from its drainage flowed into the Vermejo river below the "lower line of the O'Donnell farm." It was thus sought by counsel for plaintiff (Rec. pp. 286, 287) to show that Dawson could have claimed the Van Bremmer cañon with as much right or good faith as he claimed the land in controversy, and upon re-direct examination (Rec. pp. 298–301) Dawson was asked to explain why it was that he did not claim the Van Bremmer cañon. In order to give an explanation he had to refer to the contract which Curtis and Maulding told him they had with Lucien B. Maxwell in regard to a larger tract of land, of which the

tract in controversy is a part; and *this testimony was necessary for the purpose of explaining the intent with which Dawson claimed the land in controversy and to prevent his case from being prejudiced by argument of counsel, that he might just as well have claimed the Van Bremmer canon*. Counsel for plaintiff says these deeds were the best possible proof as to the terms of the contract. I submit that the contract itself was the best evidence of its contents. This contract which Dawson referred to was made more than a year prior to the execution of the deeds offered in evidence, and Dawson nowhere in his testimony referred to any deeds which Maxwell had given to Curtis, Maulding or Miller; and, clearly, the introduction of the deeds which they received from Maxwell more than a year after the contract about which Dawson testified could have no bearing, or tend in any way to rebut the testimony which Dawson gave as to the contract. Besides, no statement was made by counsel at the time the deeds were offered in evidence that they were offered for any such purpose, or for what purpose they were offered.

As to the claim of counsel for plaintiff in error that the deeds should have been admitted for the purpose of proving that the land in controversy was not a part of the land excepted from the deed under which plaintiff claims, it might be a sufficient answer to say that counsel made no statement at the time the deeds were offered that they were introduced for any such purpose. The deeds were excluded because the court was of the opinion that Dawson could not be bound by mere recitals in deeds to which he was not a party, and counsel for plaintiff, after that statement by the court (Rec. p. 424), did not say that they were introduced for any other purpose.

It has often been held that a case will not be reversed or a new trial granted on account of the exclusion of testimony, unless the object for which the testimony is offered is stated at the time.

"Where the party offering material testimony fails to disclose to the court the objects for which it is offered, and it is rejected for irrelevancy, he will not afterwards be granted a new trial by showing that such evidence could have been used for a purpose material to the issue."

Barksdale vs. Toomer, 2 Bailey (S. C., 180).

16 Am. & Eng. Ency. of Law, p. 505, note.

"The evidence must be proper for the specific purpose for which it is offered. The court has a right to know what it is designed to prove, in order to determine its relevancy and materiality.

"Where, therefore, evidence is rejected which is tendered for one purpose, and it is inadmissible for that purpose, but is admissible in another view of the case not alluded to at the trial, the court will not grant a new trial, as for an improper rejection of evidence."

2d Graham & Waterman on New Trials, p. 669.

Plaintiff had no right at the time the deeds were offered in evidence to put in testimony showing what land included within the Maxwell land grant was excepted from the deeds under which it claimed. If it was necessary for the plaintiff to prove that fact at all, it was necessary for it to have done so as a part of the case in chief. The admission or refusal of evidence in rebuttal which should have been introduced in chief is discretionary with the court, and cannot be assigned as error.

Johnston vs. Jones, 1 Black., 210.

Such proof was not properly admissible to rebut any testimony of the defendant, because no testimony was introduced on behalf of the defense showing anything about

the lands excepted from the deed given to plaintiff. By reference to the deeds themselves (Rec. p. 424) it will be seen that they would not have proved that the lands in controversy were included in and not excepted from plaintiff's deed, as they did not describe any part of the land in controversy and contained no intimation as to the amount of land conveyed by them. If it had been proper for the plaintiff at the time to have proved that the lands in controversy were not excepted from its deed, it would properly have been done by showing that there were no deeds upon record from Maxwell dated prior to January 25th, 1869, describing any part of the land in controversy. These deeds alone would not have proven the exception in plaintiff's deed; no other proof on that point was offered, therefore, the exclusion of the deeds was not error.

II.

Did the court err in admitting the testimony of John B. Dawson as to oral statements made by Maulding and Curtis, set forth in the third assignment of error, page 3, of brief for plaintiff in error?

On cross-examination Mr. Dawson was asked if the deed given to him by Maxwell intended to cover the land which he bought, to which Mr. Dawson answered, that it did (Rec. p. 283); and it also appeared in the testimony that Dawson claimed the land in controversy because he had bought it and believed that it was included in his deed. Upon cross-examination, as has heretofore been stated, a great many questions were also asked for the purpose of

showing that Dawson could as easily have claimed the Van Bremmer cañon under his deed as the land which he actually did claim. The testimony given by Dawson and quoted in the third assignment of error was given upon redirect examination. (Rec. pp. 298, 301, 302.)

It is apparent from a reading of the deed that the description is vague and uncertain, unless evidence *aliunde* is permitted to supplement the language used. If this deed had been permitted to remain in evidence without any explanation, it would undoubtedly have prejudiced the defendant's case before the jury. It was therefore essential for the defendant to explain why he did not claim the Van Bremmer cañon and why he claimed that the deed covered the land in controversy. He could only do this by giving his conversations with Curtis and Maulding in regard to their contract with Maxwell. It was not necessary for him to prove that such a contract actually ever existed, or to prove the contents of the contract by the best evidence. The question at issue at the time this evidence was given was not the actual contents of the contract, but related solely to the good faith of Dawson's claim to the land in controversy. Whether, therefore, the contract ever existed, or actually included the land in controversy was immaterial. If Dawson was informed that it did, believed that it did, and acted upon this belief, proof of anything else was unnecessary. When counsel for plaintiff introduced the deed in evidence he certainly knew that an explanation of its contents on re-direct examination would be necessary, and his act in introducing the deed necessitated the introduction of the very evidence to which objection is now made.

The argument made by counsel for plaintiff in error

on pages 19 to 21 of his brief, where he discusses certain remarks made by the Supreme Court of New Mexico in its decision in this case, is impertinent. It was not claimed by the defendant, either in the District Court or Supreme Court of New Mexico, that the defendant's title depended upon a verbal conveyance good under the civil law, and the testimony above referred to was not introduced for the purpose of proving a civil law conveyance. I do not desire, however, to be considered as admitting that real estate could not be conveyed under the civil law without an instrument in writing, on the contrary, I am satisfied that it could.

The testimony in regard to the conversations with Maxwell was introduced for the purpose of showing that the then owner of the Maxwell land grant had actual knowledge of Dawson's claim and possession and that at the time Lucien B. Maxwell conveyed the Maxwell land grant to the Maxwell Land Grant and Railway Company, the land in controversy in this suit was in the adverse possession of the defendant. Maxwell was *disseized*, and therefore the deed from Maxwell to the Maxwell Land Grant and Railway Company, if it purported to convey the land in controversy in this suit, was absolutely void as to such land.

It is true that the conversation between Maxwell and Dawson occured about four miles from the land about which they were talking, but the testimony (Rec. p. 299) shows that the prominent points and ridges on Dawson's place could be seen from that place. Dawson's tract of land is in the foot hills and the country to the south where the stage station was is an open prairie, and the prominent

points on the earth's surface, of which there are many, could be plainly seen not only at the stage station, but for a number of miles further south and east of that place. During this conversation, (Rec. pp. 246–301), Maxwell and Dawson certainly had in mind the identical tract now claimed by Dawson, and it was unnecessary that they should have been upon the land talked about in order to establish the boundaries of their respective possessions, but as a matter of fact they were on the larger tract contracted to Curtis, Maulding and Miller, a part of which was then in the possession of Dawson The agreement as to what ridges and divides should constitute the boundary lines was as effectual when made off the land as on it. The ridges and hills constituted a far better designation of the boundaries than would the planting of stones or the blazing of trees. It is established that at common law a deed purporting to convey land which is held adversely to the grantor, is absolutely void. This is true notwithstanding the statute of frauds.

3d Washburn on Real Property, 127, 129, 329, (4th Ed.)

In 4th Washburn on Real property at page 330 (4th Ed.) the following language is used in discussing the principle referred to:

"With a wise regard for the peace and protection of titles, this principle has been generally adopted as the law of the several states, although a different rule prevails in some of them. Among the States where this principle of law has been held to prevail are Indiana, Kentucky, New Hampshire, Massachusetts, Michigan, Georgia and Mississippi."

The few States which have not adopted this rule have done so because they concluded that the rule was in conflict

with the statute of frauds. Under the civil law, which was the law in New Mexico in 1868, there was no statute of frauds, and the rule above stated existed.

2d Smith's Leading Cases, 530–531.

So then, if the evidence establishes, as it certainly does, that the land described in the defendant's pleas was in the actual possession of Dawson, and held by him adversely to Maxwell on the 30th day of April, 1870, the date of the conveyance by Maxwell to the Maxwell Land Grant and Railway Company, that company by its deed never acquired a right of entry on the land in controversy, and the plaintiff, its grantee, was not entitled to a judgment in this case. Under this view of the case the *plaintiff* could not recover in its own name the possession of the land, even if Dawson after April, 1870, was not in actual possession. The plaintiff's deed as to this land was void.

Did the court err in admitting the testimony of various witnesses as to Dawson's ownership of the land in controversy? (Third assignment of error.)

In order to render possession of land adverse, such possession must be open and notorious. In the case at bar, it was insisted upon the trial of the case, and is insisted here, that Dawson occupied the land in controversy in a way that was calculated to prevent the real owner from knowing that the land was claimed adversely. It was, therefore, incumbent upon the defendant to prove that his occupancy of the land and claim of ownership was open and notorious. The testimony objected to was certainly competent for that purpose, and was in every respect within the rule laid down by Judge Cooley in the case of *Sparrow vs. Hovey*, 44 Michigan, page 64. Judge Cooley there said:

"Defendant having shown his possession for the req

nisite length of time, under tax titles, which are conceded to be invalid, was suffered to prove that the land was generally understood to be and called his, in the neighborhood. Exception was taken to this evidence, but we think it was competent. It tended to establish the notoriety of defendant's possession and claim of title, which were important facts in his defense."

No better way of proving the openness and notoriety of one's claim of title can be suggested than by proving that all the neighbors of the defendant talked of the land as belonging to him and recognized his claim of ownership.

If all the testimony set out in the third assignment of error was incompetent, it is not ground for reversal, because there was competent, *prima facie* evidence, uncontradicted on the same point.

Copper vs. Coates, 21 Wall., 105.

New Mexico Railroad Company vs. Hendricks, 30 Pac. R. (N. M.) 932.

III.

Did the court err in giving the first and second instructions requested by defendant? (Rec. p. 457.)

The deeds under which plaintiff claimed title, after describing the entire Maxwell grant, contained the following exception:

"Excepting from the operation of this conveyance such tracts of land, *part of the said estate*, hereby warranted not to exceed in the aggregate fifteen thousand acres, which the parties of the first part have heretofore sold and conveyed by deeds duly recorded on or prior to the 25th day of January, one thousand eight hundred and seventy."

The exception is not accurately quoted in the brief for plaintiff in error. (Rec. p. 19.)

From the pleadings in this case the only land which was in controversy in this suit was that described in defendant's first additional plea, and it then became necessary for plaintiff to prove primarily that it had the *legal title to the particular lands in controversy.* It is elementary that in an action of ejectment the plaintiff must recover upon the strength of his own title and show that he had title to the particular land in dispute.

"An exception to a grant withdraws from the operation of the conveyance some part or parcel of the thing granted, which but for the exception would have passed to the grantee under the general description. The part excepted is already in existence, and is said to *remain* in the grantor." * * *

"If the grant is of a tract of land, and the quantity is mentioned only incidentally, an exception of one or two acres is not repugnant, since the intention of the grantor then is not to convey the specific quantity mentioned, but the tract of land less the one or two acres."

5th American and Eng. Enc. Law, pages 455–456.

"The effect, in such a case, in respect to the thing excepted, is as if it never had been included in the deed."

3 Washburn on Real Property, page 370.

It will thus be seen that the above clause in plaintiff's deed constituted a legal exception of "part of the said estate." The failure to locate the land excepted rendered the deed to plaintiff uncertain and indefinite and in order to show that plaintiff's deed covered the particular piece of land in controversy, it was necessary for the plaintiff to prove that the particular land in controversy was included in the conveyance, and not a part of that excepted from the same. It is a well settled rule of law that when an action of ejectment is brought, the burden of proof is on the plaintiff to prove that the alleged trespasses were committed on

land conveyed by the deed and without the land contained in any exception in the deed. This Court so held in the case of *Hawkins vs. Barney's Lessee*, 5 Peters, 467. It is there said:

"Upon the face of the deed from Barney to Oliver, and the reconveyance from Oliver to Barney, there are recited several conveyances of parcels of the tract granted to Barbour, to several individuals, and particularly to one of eleven thousand acres to one Berryman. The case on which the instruction was prayed makes out that Barney proved Hawkins to have trespassed within the limits of the fifty thousand acres; but it is insisted that he ought also to have proved the trespass to be without the limits of the tract shown to have been conveyed away by himself. On the other side it was insisted that the onus lay on Hawkins to prove that his trespass was within the limits of one of those tracts, and the court charged in favor of Barney.

"This we conceive to be no longer an open question; it has been solemnly decided in a series of cases in Kentucky that the party offering in evidence a conveyance containing such exceptions is bound to show that the trespass proved is without the limits of the land so sold or excepted. (3 Marshall, 20; 6 Littell, 281; 1 Monroe, 142.)

"The only doubt in this case was as to which of the two parties this rule applies, since both, and Hawkins first in order, produced in evidence a deed containing the exceptions. But, whether by the exceptions or by deed, Hawkin's purpose was answered if he proved the whole land out of Barney. Not so with Barney; for in the act of proving the reinvestment of the estate in himself, he proved it to be with the exceptions mentioned; and, therefore, the rule unquestionably applied to him.

"From these observations it results that the court below erred in refusing to instruct the jury according to the prayer of Hawkins, to-wit: 'that if they believed the evidence, the plaintiff, Barney, had no right of entry when this suit was instituted, and that unless he showed that the eleven thousand acres recited to be conveyed to Berryman by Barney did not cover the land in question, he was not entitled to recover in that suit.'"

The above mentioned case was not cited in the Supreme Court of New Mexico, and that court decided upon

general principles without reference to any decided cases that where a plaintiff in an action of ejectment relies upon deeds containing an exception, that the *onus* is on the plaintiff to prove the exception. It will also be observed that Freeman, J., in his dissenting opinion does not deny that the opinion of the majority of the court on this material point was correct.

Counsel for plaintiff in error in his brief states that the purpose of the exception in the deed was evidently to protect the grantor from an action for breach of warranty. That was evidently the purpose of putting in the exception the fifteen thousand acres, but the land which was excepted from the deed was a part of the said estate described in recorded conveyances executed by Maxwell prior to January 25th, 1869.

The amount of the land excepted from the deed was not limited to fifteen thousand acres, but was all the land which was described in the recorded conveyances executed prior to January 25th, 1869. There is no evidence as to the amount which was excepted, nor is it material in this case to know the amount excepted. If *any* land was excepted from the deed, the burden of proof was upon the plaintiff to show that the exception did not cover the whole or any part of the land in controversy in the suit.

Counsel for plaintiff in error insists that it would have been hard for the plaintiff to have proven the exception. It is apparent, however, that to prove that the land in controversy was not a part of that excepted from the deed would have been a very simple matter. If plaintiff had offered in evidence certified copies of all deeds on record, dated prior to January 25, 1869, and then followed this up with other proof showing that none of the land in contro-

versy was included in these deeds, and that there were no other deeds on record prior to that date in which any of the land in controversy was described, the exception would have been fully and completely proven

As has been heretofore stated the deeds from Maxwell to Maulding, Miller and Curtis would not have proven this exception even if offered as proof at the proper time, as the plaintiff nowhere offered to prove that these deeds were the only ones of record executed by Maxwell prior to January 25, 1869. The failure on the part of plaintiff to prove this exception in its deeds was sufficient failure of proof to warrant the court to instruct the jury to find a verdict for the defendant. If, then, the trial court erred in the admission, or exclusion of testimony, such error was immaterial, as the defendant was entitled to a judgment on account of plaintiff's failure to properly prove its case. The instructions complained of are as follows:

"1. You are instructed that the patents, documents, deeds, and other papers, introduced in evidence by the plaintiff, are sufficient to vest the legal title to the whole of the land in controversy in plaintiff, and to entitle plaintiff to the possession of the whole of said lands, unless you find, from the evidence, that defendant has a legal right to the possession thereof, or of some part thereof, either by virtue of a deed of conveyance from Lucien B. Maxwell and wife, or by adverse possession for a period of ten years, or more, prior to the commencement of this suit, or, unless you find, from the evidence, that plaintiff has failed to prove that the land in controversy, or some portion thereof, is not the whole, or part of the 15,000 acres of land excepted in the conveyance from Frank R. Sherwin and others to the Maxwell Land Grant Company, under which plaintiff claims title to said land." (Rec. p. 457.)

"2. You are instructed, that the burden of proof is on the plaintiff to show that it has the legal title to, and the right of possession of, all the lands in controversy, and, unless you find, from the evidence, that the lands in con-

troversy are included in and not excepted from the deeds of conveyance under which plaintiff claims title, plaintiff cannot recover in this action." (Rec. p. 457.)

It is a well settled rule of law that all of the instructions given to the jury must be construed together. If these two instructions are construed together they simply amount to an instruction that the burden of proof is on the plaintiff to show that it has the legal title to and the right of possession of all the lands in controversy, and such instructions are proper in every suit in ejectment. Even if the plaintiff was not compelled to prove the exception in its deed the giving of these instructions would not have been erroneous, as the court had previously instructed the jury several times that the documentary evidence was sufficient to entitle the plaintiff to recover, unless the defendant had shown title to the lands in controversy by adverse possession.

IV.

The instructions given by the court construing the statute of limitations as set forth in the 5th and 6th assignments of error were not erroneous.

Section 1880 of the Compiled Laws of New Mexico, referred to by counsel for plaintiff in error, was undoubtedly intended as a statute of limitations for persons claiming lands under imperfect grants. The general statute of limitations for the recovery of real property is contained in sec-

tion 1881 of the compiled Laws of Mexico, and the pertinent part of that section is as follows:

"Sec. 1881. No person or persons nor their children or heirs shall have, sue, or maintain any action or suit, either in law or equity, for any lands, tenements or hereditaments but within ten years next after his, her or their right to commence, have or maintain such suit shall have come, fallen, or accrued, and that all suits either in law or equity for the recovery of any lands, tenements or hereditaments shall be had and sued within ten years next after the title or cause of action or suits accrued or fallen, *and at no time after the ten years shall have passed.*"

It is no longer an open question whether such a statute as this operates to vest the title in the person who has adversely occupied land for a period of ten or more years. It will be observed that the statute says that the action for the recovery shall be brought "at no time after the ten years shall have passed." This provision of the statute undoubtedly operates to extinguish the title of the real owner, and if the real owner's title is extinguished it certainly becomes vested in the adverse possessor. This Court has frequently held such a statute to have that effect. In the case of *Bicknell vs. Comstock*, 113 U. S., 152, this Court says:

"This court has more than once held that the lapse of time provided by the statute makes a perfect title.

"In *Leffingwell vs. Warren*, 2 Black, 599, it is said that 'the lapse of time limited by such statutes not only bars the remedy, but it extinguishes the right, and vests a perfect title in the adverse holder.'

"And this doctrine is repeated in *Croxall vs. Sherred*, 5 Wall., 289, and in *Dickerson vs. Colgrove*, 100 U. S., 578, 583."

Also, this court in a case brought before it from the

Territory of New Mexico, with the New Mexico statute involved, held that the trial court erred in refusing to charge the jury for the defendant as follows:

"That an uninterrupted occupancy of land by a person who has in fact no title thereto, for the period of ten years adversely to the true owner, operates to extinguish the title of the true owner thereto, and vests the right to the premises absolutely in the occupier."

Probst vs. Presbyterian Church, 129 U. S., 191.

V.

The defendant in this case was entitled to a verdict in his favor upon either one of three grounds.

A. Because the testimony establishes that the defendant had acquired title to the land in controversy by means of the statute of limitations long prior to the commencement of this suit.

B. During the lifetime of Maxwell the boundaries of Dawson's land were established as described in his plea, and Dawson placed in possession of the same under a claim of title, and at the time of the subsequent conveyance by Maxwell of the entire grant, with the exception contained in the deed given by him, he was *disseized* of the land in controversy in this suit, and the deed from him, if it undertook to convey the land in controversy, did not operate as such conveyance, because the right which Maxwell had, if any he had, in or to the land in controversy, was a mere right of entry, which could not be conveyed; and any deed purporting to convey the same was void as to the land in controversy.

C. The plaintiff having failed to prove the exception in its deed did not show that it was entitled to any of the land in controversy.

Respectfully submitted,

ANDRIEUS A. JONES,

Counsel for Defendant in Error.

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